



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket Nos. 21-450 and 20-445; FCC 22-2; FR ID 71008]

#### Affordable Connectivity Program; Emergency Broadband Benefit Program

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** In this Report and Order, the Federal Communications Commission (Commission or FCC) adopts final rules for the Affordable Connectivity Program, established by Congress in the Infrastructure Investment and Jobs Act (Infrastructure Act). The Affordable Connectivity Program is designed to make broadband service and connected devices available to eligible low-income households at affordable, discounted prices from providers that opt to participate in the program. The rules adopted in the Report and Order address, *inter alia*, the eligibility criteria for broadband service providers that opt to participate in the program, eligibility criteria for households that seek benefits, the types of broadband services and connected devices that will be covered, the amounts of reimbursements available to providers, claims procedures, consumer protection requirements, and reporting, auditing, enforcement, and related matters.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for 47 CFR 54.1802(b), 54.1804, 54.1807(b), 54.1808(c)(1) and (2), 54.1809(c), and 54.1810(a) and (b), which are effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by WC Docket Nos. 21-450, by any of the following methods:

- *Electronic Filers:* You may file documents electronically by accessing the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/filings>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to Federal Communications Commission, 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- Parties that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding the procedures for submission of confidential materials. See *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361, 35 FCC Rcd 2973 (OMD, March 31, 2020), [https://docs.fcc.gov/public/attachments/DA-20-361A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/DA-20-361A1_Rcd.pdf). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

**FOR FURTHER INFORMATION CONTACT:** Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-7400 or [eric.wu@fcc.gov](mailto:eric.wu@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in WC Docket Nos. 21-450 and 20-445, FCC 22-2, adopted on January 14, 2022 and released on January 21, 2022. The full text of this document is available at <https://docs.fcc.gov/public/attachments/FCC-22-2A1.pdf>. The Further Notice of Proposed Rulemaking that was adopted concurrently with this Report and Order is to be published elsewhere in the Federal Register.

## I. INTRODUCTION

1. In the Infrastructure Act, Congress established the Affordable Connectivity Program (ACP) on the basis of the preexisting Emergency Broadband Benefit Program (EBB Program), with modifications designed to transform it from an emergency response to a public health crisis to a longer-term program to support making discounted broadband service and connected devices available to low-income households. The Infrastructure Act includes an additional \$14.2 billion appropriation for implementing the new program. The rules adopted in the Report and Order are largely based on the Commission's EBB Program rules, with modifications to reflect statutory changes adopted in the Infrastructure Act.

2. In particular, the Infrastructure Act changed the EBB Program's subscriber eligibility rules and benefit amounts by increasing the Affordable Connectivity Program's income threshold from 135% to 200% of the Federal Poverty Guidelines, adding the Special Supplemental Nutritional Program for Woman, Infants, and Children (WIC) as a qualifying program, removing eligibility for households that qualified for the EBB Program based on factors related to income losses due to the COVID-19 pandemic, and reducing the standard monthly benefit from \$50.00 to \$30.00. *See* Infrastructure Act, div. F, tit. V, section 60502(b)(1), *amending* Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. N. tit. IX, section 904(a)(6), (a)(7)(A) (2020); 47 U.S.C. 1752(a)(6), (a)(7)(A). Under the Affordable Connectivity Program, eligible households may apply subsidy benefits to any broadband services offered by a participating provider, rather than limiting the covered services to those offered on December 1, 2020, as in the EBB Program. Infrastructure Act, div. F, tit. V, section 60502(a)(3), *amending* Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. N. tit. IX, section 904(a)(9), (b)(7); 47 U.S.C. 1752(b)(7)(A)(i). The Affordable Connectivity Program also includes modified obligations for participating providers relating to consumer protection and program promotion, as well as reporting, enforcement, auditing, and other provisions. These statutory provisions and rules implementing them are discussed following.

3. Pursuant to the Infrastructure Act, the Affordable Connectivity Program took effect on December 31, 2001. The Universal Service Administrative Company (USAC or the Administrator), which administers the Commission's universal service programs as well as the EBB and Affordable

Connectivity Programs, began accepting applications and enrollments for the Affordable Connectivity Program on December 31, 2021. As of January 14, 2022, approximately 265,000 households had enrolled in the Affordable Connectivity Program and more than 9 million households had transitioned into that newly-launched program from the EBB Program.

4. The Infrastructure Act directs the Commission to adopt rules to implement the Affordable Connectivity Program by January 14, 2022 (*i.e.*, within 60 days after November 15, 2021, the date of enactment of the statute). *See* 47 U.S.C. 1752(c)(1). As directed by the statute, a public notice initiating this proceeding and seeking comment on proposed rules was issued on November 18, 2021, *see* 47 U.S.C. 1752(c)(2); *see Wireless Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453 (WCB Nov. 18, 2021) (*ACP Public Notice*); Proposed Rule, 88 FR 74036 (Dec. 29, 2021); and interested parties were given 20 days to file comments (due Dec. 8, 2021) and 20 days for reply comments (due Dec. 28, 2021). In response, the Commission received comments from broadband providers, State and local governments, educational groups, consumer groups and other non-profits, and individual consumers.

## **II. DISCUSSION**

### **A. Participating Providers**

5. The Infrastructure Act defines an eligible “participating provider” as a broadband service provider that has either received Eligible Telecommunications Carrier (ETC) designation under 47 U.S.C. 214(e) or requested and obtained the Commission’s approval as such. *See* 47 U.S.C. 1752(a)(11)(A). This definition is consistent with the definition of “participating provider” in the Consolidated Appropriations Act for purposes of the EBB Program; and as in the EBB Program, provider participation in the Affordable Connectivity Program is voluntary. 47 U.S.C. 1752(a)(11)(A). Nothing in the Infrastructure Act requires changes to the EBB Program framework through which providers may seek to participate in the Affordable Connectivity Program, including the participating provider election process, the “expedited approval process” to approve requests to participate by providers that are not designated ETCs, *see* 47 U.S.C. 1752(d)(2)(A), or the “automatic approval process” for providers with an “established program as of April 1, 2020” for offering broadband services to eligible households with verification processes sufficient to prevent fraud, waste, and abuse. *See* 47 U.S.C. 1752(d)(2)(A),

(d)(2)(B). Providers that participated in the EBB Program and were in good standing as of December 31, 2021 when the EBB Program ceased can continue to participate in the same manner in the Affordable Connectivity Program without seeking Bureau approval or filing election notices. This includes providers with alternative verification process approvals. Providers that did not participate in the EBB Program and have not been designated as ETCs by a State or the Commission must file for automatic approval or expedited approval from the Commission. All new providers to the Affordable Connectivity Program will need to file USAC election notices.

### **1. Providers Eligible to Participate**

6. *Participating Provider Eligibility Requirements.* The Commission retains the broad, technologically neutral approach to provider participation that was used in the EBB Program. ETCs and non-ETCs seeking to participate in the Affordable Connectivity Program must establish that they provide broadband services to participate, and the Commission declines to further narrow provider eligibility among those providers that offer broadband services as defined by the statute. This interpretation continues to allow participation by ETCs and non-ETC broadband providers, including not only traditional Internet Service Providers (ISPs) such as cable providers and wireless Internet service providers, but also non-traditional broadband providers like community-owned networks, electric cooperatives, and municipal governments.

7. The Infrastructure Act removes the Consolidated Appropriations Act's requirement that the broadband services supported by the program must have been offered "in the same manner, and on the same terms, as described in any of such provider's offerings for broadband internet access service to such household, as on December 1, 2020," Consolidated Appropriations Act, 2021, div. N, tit. IX, section 904(a)(9), *struck by* Infrastructure Act, div. F, tit. V, section 60502(b)(1)(A)(iv); 47 U.S.C. 1752(a)(8), and imposes a new requirement that providers "allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same rates and terms available to households that are not eligible households." 47 U.S.C. 1752(b)(7)(A)(i). While the EBB Program required participating providers to have offered retail broadband Internet access service to eligible households as of December 1, 2020, the Infrastructure Act removed the December 1, 2020, restriction, and therefore participating providers will only need to establish they offered broadband

services to end-users prior to seeking to participate in the Affordable Connectivity Program. Participating providers can establish through certification that they provided broadband internet access service and reimbursable Internet service offerings either by timely filing the FCC Form 477 or by filing a certification, under penalty of perjury, that they provided broadband service, prior to submitting the application. As in the EBB Program, such retail broadband Internet access service must be offered or provisioned to end users, meaning the provider of retail broadband internet access service maintains a direct relationship with the customer, is responsible for dealing with customer complaints, handles customer billing, and provides quality of service guarantees to the end user.

8. *Existing EBB Program Participating Providers.* In order to enable a quick and orderly transition period by reducing administrative burdens for participating providers, the Commission, and USAC, the Commission allows existing EBB Program participating providers in good standing to be automatically eligible to participate in the Affordable Connectivity Program. Automatically transitioning participating providers from the EBB Program to the Affordable Connectivity Program helps ensure that eligible households continue to receive the Affordable Connectivity Program discount without disruptions.

## **2. Elections to Participate in the Affordable Connectivity Program by Existing EBB Program Providers, Existing ETCs and Bureau-Approved Providers**

9. Providers that did not participate in the EBB program but wish to participate in the Affordable Connectivity Program will be required to file election notices with USAC to facilitate the administration of the program and provide USAC the necessary information to incorporate providers into its systems for eligibility determination, enrollment, and reimbursement. This also applies to providers seeking to add new jurisdictions (States or territories). Existing ETCs will need to file election notices with USAC only, while non-ETCs will need to first apply for and then obtain Bureau approval prior to filing their election notices with USAC. The Commission directs the Bureau and USAC to work expeditiously to review provider applications and elections, respectively, and directs the Bureau to issue additional guidance and instruction as necessary for providers seeking to participate in the Affordable Connectivity Program. Further, the Commission expects the Bureau and USAC to prioritize their reviews

to limit excessive delay in issuing approvals of the applications and elections once properly submitted by the providers.

**a. Election Notice Process and Requirements**

10. The Commission directs USAC, under the supervision of and in coordination with the Bureau, to establish and administer a process to enable all new participating Affordable Connectivity Program providers to file election notices containing information sufficient to effectively administer the program, including the information discussed following. Participating providers must certify under penalty of perjury that the information set forth in the election notice is true, accurate, and complete; they understand and will comply with all statutory and regulatory obligations described within the Order; and all terms and conditions and other requirements applicable to using the Lifeline National Eligibility Verifier (National Verifier), National Lifeline Accountability Database (NLAD), Representative Accountability Database (RAD), and other USAC systems. Providing materially false information in the election notice will disqualify a provider from participation in the Affordable Connectivity Program or result in a reduced reimbursement, as appropriate. 47 U.S.C. 1752(a)(11), (d).

11. Provider elections must include the following information to establish that the provider has met the criteria and can provide enough information to allow USAC to administer the program.

- (a) *List of States or territories in which the provider plans to participate in the Affordable Connectivity Program.* A provider must list each State in which it will offer Affordable Connectivity Program services. Consistent with USAC's existing processes, providers should identify to USAC the postal ZIP code(s) or Census Block(s) where the provider will offer the Affordable Connectivity Program service to obtain Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), and provide information for use in the "Companies Near Me Tool" to the extent necessary.
- (b) *A statement that, in each such State or territory, the provider was a "broadband provider."* Consistent with the Commission's broadband data reporting rules, participating providers will be able to establish that they provided broadband Internet access service and reimbursable Internet service offerings through reference to

previous FCC Form 477 filings. The Commission will consult the subscription data provided on the FCC Form 477 and any successor filing to determine compliance with this requirement. To fulfill this requirement, a provider should reference the most recent FCC Form 477 data month submission showing service in the jurisdiction. Providers that are not required to file FCC Form 477 must certify that they provided retail broadband Internet access service to end users, submit supporting documentation demonstrating such offerings, and identify the underlying carrier providing the network facilities.

- (c) *A statement identifying where the provider is an existing ETC.* A provider who is an ETC or is affiliated with an ETC seeking to begin offering the Affordable Connectivity Program must submit to USAC documentation demonstrating that it is a participating provider in specific states.
- (d) *A statement identifying where the provider received Bureau approval to participate in the Affordable Connectivity Program.* Providers seeking approvals outside of states where they are existing ETCs or are affiliated with existing ETCs (within the meaning of “affiliate” in 47 U.S.C. 153(2)) will need to identify those states and submit the statement to the Bureau for approval to participate in the program.
- (e) *A statement confirming whether the provider intends to distribute connected devices and supporting documentation.* Providers seeking reimbursement for connected devices must submit a statement of intent to distribute connected devices as part of their election notice. These providers should also include documentation detailing the equipment, including device make, device model, device type, device characteristics (e.g., screen size, storage, memory) and market value of the laptop, desktop or tablet. Connected devices must be accessible to and usable by users with disabilities.

12. Providers newly seeking to participate in the Affordable Connectivity Program must obtain and be able to provide the necessary administrative registrations to utilize the Commission and USAC processes, including the Commission Registration System (CORES), FCC Registration Number



(FRN), Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), System for Award Management (SAM), Employer Identification Number (EIN), Tax Identification Number (TIN) and/or Dun & Bradstreet DUNS number for all entities the provider anticipates seeking reimbursement. The FRN, EIN/TIN, and DUNS should all be associated with the same entity filing the election notice, and the provider should identify any parent/subsidiary or affiliate relationships it has with other broadband service providers. *See* 47 U.S.C. 153(2) (defining affiliate). An election should be filed for every entity expecting to receive reimbursement from the Affordable Connectivity Program.

13. The Commission will not collect broadband internet service plan information during the election process, and participating providers do not have to file broadband service plan information during the USAC election process or update existing service plan information that they previously filed during the EBB Program election process. Providers are on notice of the statutory requirement to offer ACP discount on “any internet service offering” and the requirement adopted in the Order to certify compliance with the ACP rules as a condition of participation.

14. The Commission directs USAC, in coordination with the Bureau, to expeditiously process election notices and to establish necessary systems and processes to systematically review election notices on a rolling basis. USAC should notify a provider promptly if its election notice is incomplete or otherwise contains errors that prevent USAC from processing the election notice. USAC will only reject election notices that are materially incomplete and that the provider fails to update.

**b. Obligations of Providers Electing to Participate in Affordable Connectivity Fund**

15. The Commission has authority under the Infrastructure Act to require participating providers to make available the necessary information and certifications to obtain access to the existing USAC systems needed to administer the Affordable Connectivity Program, and it authorizes USAC to continue to make available the appropriate databases to administer the program, including the National Verifier, NLAD, RAD, and Lifeline Claims System (LCS), and to take the appropriate actions to update, modify, or create the necessary systems to administer the Affordable Connectivity Program in line with the Commission’s direction in the Order. The Commission also directs the Bureau and the Office of

Managing Director (OMD) to supervise and coordinate with USAC all actions necessary to continue to make USAC databases and systems available for the Affordable Connectivity Program.

16. *Access to Affordable Connectivity Program Systems.* The Commission further requires participating providers to use USAC systems, such as the LCS, NLAD, and RAD, for program administration, and permits them to use the National Verifier to determine household eligibility if they do not have approved alternative verification processes. *See* 47 U.S.C. 1752(b)(3), (i)(5). Based on the Commission's experience with the EBB Program, the Commission will continue to rely on the USAC-administered National Verifier, NLAD, RAD, LCS, and other established processes, including the provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews. The Commission directs the Bureau and USAC, as directed by the Bureau, to issue any further guidance or instruction necessary to clarify the obligations of participating providers when using USAC databases and the administrative process established for the Affordable Connectivity Program.

17. *Required Updates to Election Notice Information Resulting from Transactions of Participating Providers.* Participating providers must maintain up-to-date information in their election notices filed with USAC and shall keep the identifying information specified in those notices, including points of contact, FRN, EIN/TIN, and DUNS, up to date. Participating providers must update this information following any transaction that would result in a change to the identifying information submitted on an election notice (although they need not seek approval specifically for continued participation in the Affordable Connectivity Program following transfers of ownership or control under 47 U.S.C. 214). Providers must submit updated and accurate contact information and similar administrative information within ten business days of the change in information.

**c. Sales Agent Financial Incentives for Enrollments.**

18. Consistent with the EBB Program rules, the Commission continues to require all participating providers to have their agents and other enrollment representatives registered with the Representative Accountability Database (RAD), as is currently required for the Lifeline and EBB Programs, as a way to minimize waste, fraud, and abuse. To address the potential for waste, fraud, and abuse caused by commission-based compensation for sales agents, the Bureau proposed prohibiting any

commission compensation for enrollment representatives or direct supervisors. *ACP Public Notice*, 86 FR at 74040-41, para. 18. At this time, the Commission declines to adopt a strict prohibition on participating providers offering commission-based compensation to employees, sales agents, or similar enrollment representatives. The Commission instead adopts a more limited prohibition on participating providers and, as done for Lifeline, restricts them from offering or providing to their enrollment representatives or direct supervisors any commission compensation that is based on the number of households who apply for, are enrolled in, or receive the Affordable Connectivity Program benefit from that provider, or based on revenues the participating provider receives in connection with the Affordable Connectivity Program, including payments for connected devices. In the *EBB Program Order*, the Commission declined to apply this prohibition to the EBB Program “to avoid discouraging provider participation and diminishing consumer choice” in a temporary program. *Emergency Broadband Benefit Program*, 86 FR 19532, 19559, para. 142 (April 13, 2021) (*EBB Program Order*).

19. The considerations for the more permanent Affordable Connectivity Program are different, and our experience during the EBB Program with agent-driven, apparent improper enrollments necessitates adopting a program ban on agent commission compensation similar to the Lifeline Program. For example, the FCC’s Office of Inspector General (OIG) recently issued an advisory raising concerns about potential waste, fraud and abuse with respect to EBB Program enrollments based on the USDA National School Lunch Program’s Community Eligibility Provision (CEP). *See generally Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision* (FCC OIG Nov. 22, 2021), <https://www.fcc.gov/document/fcc-inspector-general-advisory-regarding-ebb-enrollment-fraud> (*OIG Advisory*); *Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Benefit Program Enrollments Based on the Community Eligibility Provision*, WC Docket No. 20-445, DA 21-1464 (WCB Nov. 22, 2021). Specifically, the advisory observes and describes certain problems associated with the CEP enrollment process that involve misconduct by sales agents. *OIG Advisory* at 2-3. While the Bureau and USAC have engaged in remedial actions to prevent this specific abuse, the Commission is concerned that the financial incentives for provider sales agents based on enrollments and applications invites program waste.

20. This decision is bolstered by a similar restriction in the Lifeline program. In 2019, the Commission banned this practice in the Lifeline program, holding that “while the National Verifier plays an important role in helping to address waste, fraud, and abuse in the program, we do not believe that it will eliminate the financial incentives for individuals to attempt to defraud the Lifeline program. Commissions based on the number of Lifeline applications or successful Lifeline enrollments are one such incentive, and by limiting them today, we remove a financial incentive for committing fraudulent activity.” *Bridging the Digital Divide for Low-Income Consumers*, Final Rule, 84 FR 71308, 71315, para. 52 (Dec. 27, 2019) (*Lifeline Fifth Report and Order*). The Commission finds this rationale persuasive. While the Commission initially declined adopting such a ban for the EBB Program to not discourage provider participation, given the robust provider participation and household enrollments seen in the EBB Program, the Commission finds the public interest is better served by preventing waste, fraud, and abuse caused by incentives related to commissions.

21. In considering this decision, the Commission is not persuaded by comments in the record suggesting that such a limited commission-based compensation prohibition is unnecessary or that representative registration in the RAD alone is sufficient to prevent waste, fraud, and abuse. In the Commission’s experience, both in Lifeline and the EBB Program, agent registration does not remove the financial incentive to improperly enroll a household when the agent is compensated based on the enrollment. *See OIG Advisory* at 2-3. Further, agent registration allows for audits, trend analysis, and other remedial actions after the improper enrollment occurs, but does little to prevent the improper behavior or remove the incentive for abuse. Commenters additionally suggest that the Lifeline commission ban was a stop-gap measure that was put in place prior to the full launch of the National Verifier and thus does not need to be implemented in the Affordable Connectivity Program, which utilizes the National Verifier. The Commission, however, continues to ban commission-based compensation in the Lifeline program following the full deployment of the National Verifier, and the Commission has recognized that the National Verifier itself does not remove the financial incentives for sales agents to improperly enroll ineligible households. *Lifeline Fifth Report and Order*, 84 FR at 71315, para. 52.

22. The Commission considered a stricter prohibition that would bar any commission-based compensation to participating providers’ enrollment representatives. *ACP Public Notice*, 86 FR at 74040-

41, para. 18. However, because this broad prohibition may have had unintended consequences given the frequency broadband providers use commission-based compensation for their enrollment representatives across multiple services and business operations, the Commission limits the prohibition to only commissions based on ACP applications, enrollments, participation, or revenues, thus striking a balance in preventing certain abuses in the program while reducing the logistical and administrative burden for participating providers that a blanket prohibition on commissions may have caused. Finally, the Commission finds support in the record to ban agent compensation based on ACP applications and enrollments from commenters recognizing the financial incentive to enroll consumers can result in misleading and improper information being provided to consumers to induce enrollments or other abusive behaviors.

23. Accordingly, the Commission prohibits participating providers from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of consumers who apply for, are enrolled in, or receive the affordable connectivity benefit from that provider. This restriction applies to an employee, agent, contractor, or subcontractor, acting on behalf of a participating provider or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment. For purposes of this rule, a provider's payment to a third-party entity that in turn provides commissions to an enrollment representative is subject to this prohibition. Likewise, the Commission determines that providers who allow agents to retain cash payments for device purchases related to the ACP enrollments are providing an incentive based on ACP enrollments, and thus this activity is also prohibited under these rules. This restriction strikes the balance between a blanket commission prohibition that may have been logistically and administratively difficult for participating providers given the frequent use of this practice for broadband providers in general service initiations and the goal of preventing waste, fraud, and abuse caused by the financial incentives to enroll any household in the Affordable Connectivity Program through the use of commissions. This restriction is not intended to prevent providers from using customer service representatives to assist consumers in the application and recertification processes, but customer service representatives should not be compensated based on the number of customer applications that are approved. Further, this

restriction only applies to commissions related to ACP applications, participation, enrollments, or revenue, and while it does not prohibit commissions paid for sale of service or provider business incentives unrelated to the Affordable Connectivity Program, it does not authorize providers to shift commissions that would have been paid for ACP applications, enrollments, or revenues to other services or business operations. This approach to restricting commissions based on ACP applications is supported by commenters that recognize this compromise addresses potential improper behaviors while not causing overly burdensome implementation for participating providers.

**d. Provider Annual Certification Requirements.**

24. Providers are required to submit to USAC annual officer certifications relating to the Affordable Connectivity Program. The officer with responsibility for a participating provider's ACP activity shall certify, under penalty of perjury, that the participating provider has policies and procedures in place to ensure compliance with ACP rules. This annual certification is necessary to ensure that all ACP providers are vigilant against waste, fraud, and abuse, and are undertaking efforts to ensure compliance with the ACP rules, which will be particularly important as this program is anticipated to last multiple years. At a minimum, the annual certification will require ACP providers to attest that they have policies and procedures to ensure the eligibility of their subscribers to receive ACP support and for ensuring the accuracy and completeness of the information they provide to the National Verifier and NLAD; an acknowledgement that providers are liable for violations of ACP rules and that their liability extends to violations by their agents, contractors, and representatives; and other information deemed necessary by the Bureau to ensure that providers have a plan for complying with ACP rules. The Commission directs the Bureau to develop an annual officer certification and submission process with USAC and set a uniform deadline for all providers to submit this annual certification.

**3. Non-ETC Provider Applications and Approval Process**

**a. Automatic Approval Process for Providers with Existing Support Programs**

25. The Commission adopts an automatic approval process to enable non-ETC broadband providers with "an established program as of April 1, 2020, that is widely available and offers Internet service offerings to eligible households and maintains verification processes that are sufficient to avoid

fraud, waste, and abuse” to be automatically approved upon the filing of information meeting the criteria. 47 U.S.C. 1752(d)(2)(B). Any non-ETC broadband provider seeking to qualify for such automatic approval must file an application describing: (1) the states or territories in which it plans to participate, (2) the service areas in which the provider has the authority, if needed, to operate in each State, but has not been designated an eligible telecommunications carrier, and (3) a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Affordable Connectivity Program.

26. *Established Program as of April 1, 2020.* The Commission maintains the interpretation it adopted in the EBB Program of what constitutes an “established program” that is “widely available” while accounting for the Infrastructure Act’s modifications to the statute. This requirement encompasses any eligible broadband provider that maintains an existing program that was made available by April 1, 2020, offering broadband to subscribers meeting at least one of the criteria in the statute’s definition of an eligible household. Specifically, providers offering broadband subscribers discounted rates based on criteria such as low-income, participation in Federal, State, or local assistance programs, or other means-tested eligibility criteria qualify for this automatic approval process. 47 U.S.C. 1752(a)(6)(D). However, the Infrastructure Act removes eligibility for households that qualified based on a provider’s COVID-19 program or having experienced a substantial loss of income since February 29, 2020. In keeping with the directive of Congress, the Commission modifies the requirements of what constitutes an “established program” to reflect the removal of COVID-19-specific response programs and other short-term bill forbearance or forgiveness programs. A provider seeking to participate in the Affordable Connectivity Program can demonstrate an “established program” for automatic approval by submitting information demonstrating that it maintains an existing low-income program that was made available by April 1, 2020, to subscribers meeting at least one of the criteria in the revised definition of an eligible household. To qualify for automatic approval, providers must demonstrate that they are offering broadband subscribers discounted rates based on criteria such as low-income, participation in Federal, State, or local assistance programs, or other means-tested eligibility criteria, and must also demonstrate the pre-existing verification process used for this existing program. The principal consideration in determining an “established program” for automatic approval is whether subscribers receive or were eligible to receive a

financial benefit through reduced rates. A program is “widely established” when it was offered to subscribers in a substantial portion of the service provider’s service area in a particular State.

27. *Required Verification Processes.* The Infrastructure Act requires that providers seeking automatic approval to participate in the Affordable Connectivity Program have established programs that maintain verification processes that are “sufficient to avoid fraud, waste, and abuse.” 47 U.S.C. 1752(d)(2)(B). Providers that have been offering a broadband program for eligible households prior to submitting applications for automatic approval and are submitting applications for automatic approval must describe only the established program and participation requirements to meet the approval criteria.

28. Providers that receive automatic approval to participate in the Affordable Connectivity Program will use the National Verifier and the National Lifeline Accountability Database (NLAD) to verify household eligibility or their own alternative household eligibility verification processes, or the combination of both, before seeking reimbursement. To ensure the eligibility of the households enrolled through an approved alternative verification process, the Commission directs USAC to conduct quarterly program integrity reviews to ensure that subscribers enrolled through a provider’s alternative verification process are eligible for the Affordable Connectivity Program.

29. *Timing of Approvals.* Providers that file applications certifying to and making necessary demonstrations for the criteria outlined preceding will receive approval automatically once the Bureau confirms all required information was submitted.

#### **b. Expedited Review Process for Non-ETC Providers**

30. The Commission adopts an expedited review process for non-ETC providers that do not qualify for automatic application processing and are not affiliated with an ETC in the same jurisdiction consistent with the EBB Program. Such providers must file an application for expedited review to receive approval from the Bureau to participate in the Affordable Connectivity Program by establishing a sufficient showing that they have met the criteria for expedited review and approval, as outlined following.

- (a) *A list of states or territories where the provider will offer Affordable Connectivity Program services.* A provider seeking approval must list each jurisdiction in which it seeks to be approved to offer ACP-supported services. While the provider need only



identify the State or territory where it plans to offer qualifying services for purposes of its submission to the Bureau, providers should be prepared to identify to USAC in their election the postal ZIP code(s) or Census Block(s) where Program service will be offered to obtain Service Provider Identification Number(s) (SPINs) or Study Area Codes (SACs), as necessary.

- (b) *A statement identifying the jurisdiction in which the provider requires FCC approval and jurisdictions in which the provider is an existing ETC.* A provider that is designated as an ETC or affiliated with an ETC (*see* 47 U.S.C. 153(2), defining “affiliate”) in some states or territories must submit an application and obtain Bureau approval to participate in the Program in states or territories where the provider is not designated as an ETC. Providers without ETC designations or unaffiliated with ETCs must certify that they are authorized to provide broadband services.
- (c) *Certification of the provider’s plan to combat waste, fraud, and abuse.* Participating provider applications must include a certification that the provider understands and complies with all statutory and regulatory obligations, including those described within the Order, as a condition of offering ACP-supported services. Specifically, a provider must certify that it will:
- (i) confirm a household’s eligibility for the Program through either the National Verifier or a Commission-approved eligibility verification process prior to seeking reimbursement for the respective subscriber;
  - (ii) follow all enrollment requirements and obtain all certifications as required by the Program, including providing eligible households with information describing the Program’s eligibility requirements, one-per-household rule, and enrollment procedures;
  - (iii) interact with the necessary USAC systems, including the National Verifier, NLAD, and RAD, before submitting claims for reimbursement, including performing the necessary checks to ensure the household is not receiving duplicative benefits within the Program;

- (iv) de-enroll from the Program any household it has a reasonable basis to believe is no longer eligible to receive the benefit consistent with Program requirements;
- (v) comply with the Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and
- (vi) agree to the Commission's enforcement and forfeiture authority.

**c. Alternative Verification Process Applications**

31. The Infrastructure Act allows a participating provider to “rely upon an alternative verification process of the participating provider,” to determine household eligibility and enroll households in the EBB program, subject to certain conditions. 47 U.S.C. 1752(b)(2)(B). The statute provides that the “participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement,” and the Commission has seven days after receipt of the information to notify the participating provider if its “alternative verification process will be sufficient to avoid waste, fraud, and abuse.” *Id.* This approval allows participating providers to verify all household eligibility criteria through their own eligibility verification process in addition to, or instead of, using the National Verifier.

32. *Participating Provider Eligibility to Use an Alternative Verification Process.* Providers' alternative verification processes must be at least as stringent as methods used by the National Verifier. The use of alternative verification processes is limited to providers that maintain an existing verification process used for their own self-subsidized low-income program or other purpose unrelated to the EBB Program, Affordable Connectivity Program, or similar Federal assistance programs. Providers lacking an existing household eligibility verification process would not be able to demonstrate that a new process would be sufficient to avoid waste, fraud and abuse. These providers must use the NLAD, in conjunction with the National Verifier and the school-based eligibility as permitted by statute, 47 U.S.C. 1752(b)(2)(C), to determine household eligibility for the Affordable Connectivity Program.

33. Providers with approved EBB Program alternative verification processes can continue to use those processes when enrolling households in the Affordable Connectivity Program in a manner consistent with the Affordable Connectivity Program's revised eligibility criteria and these providers need

not seek new Commission approval for their alternative verification processes that already are compliant with these requirements. However, providers with approved alternative verification processes must seek new Commission approval to verify any eligibility criteria not originally contained in prior approved processes or when the provider seeks to update or modify its approved alternative verification process.

34. *Alternative Verification Process Application Requirements.* Participating providers seeking to use alternative verification processes must collect a prospective subscriber's: (1) full name, (2) phone number, (3) date of birth, (4) e-mail address, (5) home and mailing addresses, (6) name and date of birth of the benefit qualifying person if different than applicant, (7) basis for inclusion in program (e.g., SNAP, SSI, Medicaid, school lunch, Pell Grant, income, provider's existing program, etc.) and documentation supporting verification of eligibility, and (8) certification that the information included in the application is true. The provider is required to describe the processes it (or a third-party) uses to verify the required information and is required to explain why the alternative process would be sufficient to avoid waste, fraud, and abuse. The provider is also required to explain how it trains its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents. If the alternative verification process fails to include any of the required information, the provider is required to explain why such information was not necessary to prevent waste, fraud, and abuse. Finally, a provider must describe why its established program requires approval of an alternative verification process and it is required to explain why it proposes to use an alternative verification process instead of the National Verifier eligibility determinations.

35. *Timing of Alternative Verification Process Approvals.* As set out by the statute, the "participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement," and the Commission has seven days after receipt of the information to notify the participating provider if the participating provider's "alternative verification process will be sufficient to avoid waste, fraud, and abuse." 47 U.S.C. 1752(b)(2)(B). The Bureau will issue decisions regarding the application or otherwise notify the provider of why the application is insufficient within seven business days of the receipt of the application. If the provider's application is incomplete, the seven-business-day timing will not begin until the applicant provides additional information requested from the Bureau. Providers that make changes to approved procedures are required

to inform the Commission in writing of those changes by filing a new application documenting the changes.

## **B. Household Eligibility**

### **1. One-Per-Household Limitation**

36. The Affordable Connectivity Program provides “eligible households” a monthly discount on broadband service and a one-time benefit for a connected device. 47 U.S.C. 1752(a)(6), (a)(7)(A). The Consolidated Appropriations Act and the Infrastructure Act do not define “household.” The Commission adopts the definition of “household” used in Lifeline and the EBB Program for the Affordable Connectivity Program. The Commission directs USAC to implement measures to ensure that during the 60-day transition period, legacy EBB Program households cannot receive the transition period benefit amount and the affordable connectivity benefit at the same time, even if they submit new applications for the Affordable Connectivity Program.

37. To facilitate the administration of the one-per-household limitation, the Commission directs the Bureau, in coordination with USAC, to make any necessary revisions to the worksheet used by households seeking to enroll in the Affordable Connectivity Program that reside at the same address as another household that is already enrolled in the Program. Where a participating service provider seeks to enroll a subscriber whose eligibility was verified through an approved alternative verification process or school-based eligibility verification and that subscriber also resides at the same address as another household enrolled in the Affordable Connectivity Program, the service provider must collect and retain a household worksheet (in either online or paper format) and retain any other subscriber provided documentation relevant to a determination that the household is not receiving more than one ACP benefit under the Program rules. Where a service provider conducts eligibility determinations pursuant to an approved alternative verification process, those processes must include measures to confirm that a household, under the definition the Commission adopts here, is not receiving more than one Affordable Connectivity Program benefit. The Commission also directs USAC to conduct quarterly program integrity reviews to confirm that Affordable Connectivity Program subscribers who reside at the same address are in compliance with the one-per-household limitation.

### **2. Participating service providers are required to check their internal records**

**for potential household and individual duplicates. This requirement is consistent with the requirement to implement policies and procedures for ensuring that a household is eligible under Program rules. Qualifying Income and Eligibility Programs**

38. Pursuant to the Infrastructure Act, 47 U.S.C. 1752(a)(6)(A-E), a household may qualify for the Affordable Connectivity Program if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program (with the modification that the qualifying household income threshold is at or below 200 percent of the Federal Poverty Guidelines for a household of that size); (2) has been approved to receive school lunch benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act, or the school breakfast program under section 4 of the Child Nutrition Act of 1966; (3) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 in the current award year; (4) meets the eligibility criteria for a participating provider's existing low-income program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest; or (5) receives assistance through the WIC Program, established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786). The Infrastructure Act added WIC as a qualifying program for the Affordable Connectivity Program, raised the maximum income for qualifying based on household income for purposes of the Affordable Connectivity Program from 135 percent to 200 percent of the Federal Poverty Guidelines for a household of that size, and eliminated as qualifying criteria substantial loss of income since February 29, 2020, and participation in a provider's COVID-19 program. The Commission directs USAC to make the necessary changes to the relevant program systems, including NLAD, National Verifier, and LCS, and to update the acceptable documentation guidelines in order to implement the eligibility criteria for the ACP.

39. *Implementation of WIC as a Qualifying Program.* The Commission directs the Bureau, in conjunction with USAC, to identify and establish connection(s) with database(s) that could be used to automatically verify eligibility based on participation in WIC. To ensure that households can enroll in the Affordable Connectivity Program based on participation in WIC in the interim, while also promoting program integrity, the Commission directs USAC to develop acceptable documentation guidelines for WIC and to make adjustments to those criteria as needed to administer the program and guard against

potential waste, fraud and abuse. The WIC documentation requirements should be at least as robust as the documentation requirements that USAC uses for other qualifying programs.

40. *Community Eligibility Provision and Similar Provisions, and Acceptable Documentation Period for School Lunch and Breakfast Programs.* Households may enroll based on a household member's enrollment in a school or school district that participates in the Community Eligibility Provision (CEP), through which schools or school districts provide free lunch or breakfast to all students without requiring an individual application for a meal benefit.

41. To prevent waste, fraud, and abuse in the Affordable Connectivity Program, households seeking to enroll based on the CEP are required to identify the CEP school and provide documentation demonstrating that a member of the household attends the identified CEP school. Households seeking to qualify based on a child or dependent's attendance at a CEP school should also provide the benefit qualifying person information when submitting their application. Furthermore, the school documentation that households submit must include the name of the student enrolled, the school year for which they are enrolled, the name and address of the school, and contact information for that school to validate that the proof of enrollment is for a CEP school. The Commission directs USAC to conduct quarterly program integrity reviews of a sample of households that enroll on this basis. USAC will de-enroll households that do not confirm their eligibility as required by the Commission's rules.

42. Households cannot qualify for the Affordable Connectivity Program based on a household member's enrollment in a school that participates in USDA Provisions 2 and 3, which, similar to the CEP, allow schools to provide free breakfast or lunch to all students without requiring individual annual applications. *See USDA, Provisions 1, 2, and 3*, <https://www.fns.usda.gov/cn/provisions-1-2-and-3> (last visited Jan. 14, 2022) (describing Provisions 2 and 3). Also, participation in the Summer School Food Service Program, which is separate from the school lunch and breakfast program, does not qualify a household to participate in the Affordable Connectivity Program.

43. Households who seek to enroll based on a current student's participation in a free and reduced price school lunch or breakfast program may qualify based on documentation from the current school year or the school year immediately preceding the application for the Affordable Connectivity Program. To qualify based on a household member's participation in a qualifying school lunch or

breakfast program, the household member must be a current student at the time the ACP application is submitted. Program participants must notify their service providers if they are no longer eligible for the Affordable Connectivity Program, such as if no member of the household qualifies for the free and reduced price school lunch or breakfast programs or no member of the household attends school.

### **3. Enrollment of Eligible Households in the NLAD**

44. *Use of the National Lifeline Accountability Database.* The NLAD will be used as a program-wide tool for enrollment, as well as the basis for reimbursement calculations and duplicate checks in all states, territories, and the District of Columbia, regardless of a State's NLAD opt-out status in the Lifeline program. Participating service providers must enroll all consumers participating in the Affordable Connectivity Program in the NLAD, regardless of whether the subscriber resides in a State that has opt-out status for the Lifeline program. The Commission directs USAC to make changes to the NLAD that are necessary to implement the rules and requirements that the Commission adopts in the Report and Order and to give participating service providers advance notice of any NLAD system changes for the Affordable Connectivity Program so they can make corresponding changes to their systems.

45. Eligible households can participate in both the Lifeline program and Affordable Connectivity Program for the same or different services. The Commission directs USAC to enable the NLAD to allow subscribers to have separate identifiers for the Lifeline program and the Affordable Connectivity Program, which can be associated with the corresponding Lifeline provider or Affordable Connectivity Program provider, as applicable.

46. Providers participating in the Affordable Connectivity Program must submit to the NLAD, at the time of enrollment, the same types of information that providers were required to submit to enroll households in the EBB Program. The required information sufficiently identifies the enrolled household for purposes of administering the program, including duplicate checks and verifying the applicant's status as alive, and provides information on the service, device, method of verifying eligibility and household qualification for the higher Tribal benefit level if applicable. Prior to transmitting subscriber information to the NLAD, service providers must also comply with the disclosure and consent

requirements that the Commission adopts in the Report and Order and must submit changes to subscriber information to the NLAD within 10 business days.

47. Service providers are prohibited from enrolling or claiming ACP support if USAC cannot verify a subscriber's status as alive unless the subscriber provides documentation to demonstrate his or her status as alive. The Commission directs USAC to explore additional ways to improve the process, for example identifying and notifying service providers about potentially deceased subscribers, and to conduct program integrity reviews to ensure compliance with this requirement.

48. *Coordination With Lifeline Opt-Out States.* USAC and the three Lifeline opt-out states of Texas, California, and Oregon have worked together closely since the start of the EBB Program to streamline the enrollment of Lifeline subscribers in those states into the EBB Program by providing weekly subscriber eligibility listing updates to USAC. To facilitate the enrollment of qualifying households in these states into the Affordable Connectivity Program, the Commission directs USAC to continue to work with these three states to explore additional ways to streamline and improve efficiency in the enrollment of Lifeline subscribers in these states into the Affordable Connectivity Program. Consumers in the Lifeline opt-out states can separately submit Affordable Connectivity Program applications, but they still need to undergo the applicable State eligibility processes.

#### **4. Verifying Subscriber Eligibility and Identity**

49. The Infrastructure Act maintained for the Affordable Connectivity Program the three methods for verifying household eligibility: the National Verifier, an approved service provider alternative verification process, and school-based eligibility verifications. Legacy EBB Program households who qualified under eligibility criteria that are still applicable to the Affordable Connectivity Program and households participating in Lifeline do not need to submit a new application or new eligibility documentation to participate in the Affordable Connectivity Program. However, existing Lifeline subscribers who do not already participate in the EBB Program will be required to affirmatively consent to participation in the Affordable Connectivity Program pursuant to the consumer consent and disclosure requirements outlined in the Order. Legacy EBB Program households are not required to provide new consent to continue the same service through the Affordable Connectivity Program with their current provider, except as may be required for the applicable transition path for that household.



50. *National Lifeline Eligibility Verifier.* The National Verifier is a system of systems with connections to State and Federal eligibility databases that can automatically check and confirm a household's eligibility electronically, followed by manual review of eligibility documentation for any applicants whose eligibility cannot be verified using an automated data source. The National Verifier has already been modified to make eligibility determinations based on the eligibility criteria that were added (WIC and income at or below 200% of the Federal Poverty Guidelines) and removed (substantial loss of income since February 29, 2020) in the Infrastructure Act for purposes of the Affordable Connectivity Program.

51. USAC's existing acceptable documentation guidelines must be used where manual reviews are conducted. The Commission directs the Bureau to coordinate with USAC to make changes to the documentation criteria as necessary to administer the Affordable Connectivity Program and promote program integrity.

52. The *ACP Public Notice* also sought comment on allowing applicants for the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation, as was permitted for the EBB Program. *See ACP Public Notice*, 86 FR at 74045, para. 39. Many commenters explained that this flexibility removed obstacles to enrollment and resulted in additional consumers applying for the EBB Program that would not have applied if they were required to provide the last four digits of their social security number. The Commission is persuaded that continuing this approach for the Affordable Connectivity Program is justified because it supports increased program participation. Therefore, the Commission allows consumers seeking to apply for the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation, and it encourages consumers to provide the last four digits of their social security number because this significantly reduces the time required for identity and eligibility verifications.

53. The Bureau, in conjunction with USAC, has already developed approval criteria for acceptable identity documentation, which include a government-issued ID (such as a State ID), passport, U.S. driver's license, U.S. military ID, or Individual Taxpayer Identification documentation. The Commission directs the Bureau to coordinate with USAC to make changes to the identity documentation

requirements as necessary to administer the program and promote program integrity and the Commission directs the Bureau to work with USAC to explore whether other systems or databases could be used to verify the identity of consumers who provide alternative documentation instead of the last four digits of their social security number.

54. The Commission does not allow any third party, whether a service provider or neutral third party entity, to remotely submit an Affordable Connectivity Program application on behalf of a consumer who is not physically present with the party providing assistance. Where the National Verifier is used to conduct eligibility verifications, prospective subscribers must interact directly with the National Verifier. Third parties can assist households with completing a paper or online application, provided that the applicant is physically present and certifies and signs the application.

55. Eligible households may experience difficulty accessing or navigating the National Verifier on their own, and may require assistance to complete and submit applications for the Affordable Connectivity Program. It may be beneficial to provide access to the National Verifier to a limited number of neutral, trusted third party entities, such as schools and school districts, or other local or State government entities, for purposes of assisting consumers with completing and submitting an application for the Affordable Connectivity Program, provided that the consumer is physically present with the person providing assistance. The Commission directs the Bureau, in coordination with USAC, to conduct a one year test pilot for granting State or Tribal entity representatives access to the National Verifier for purposes of assisting customers with applying for the Affordable Connectivity Program. Consistent with current practice in the Lifeline program, those that are granted access to the National Verifier in this Pilot will be required to register in the Representative Accountability Database (RAD). Government entities participating in this Pilot (such as schools) may enter into partnerships with neutral non-profit organizations for purposes of raising awareness about the Affordable Connectivity Program and increasing the enrollment of eligible households, provided that the government entity informs the Bureau that it is partnering with a specific non-profit organization, access to the National Verifier through the Pilot is limited to actual representatives of the participating government entity, and enrollment activities through the National Verifier take place in the government entity's facility or other location maintained or operated by the government entity. Entities participating in this Pilot (and their neutral non-profit

partners as applicable) must maintain neutrality with respect to ACP participating providers when assisting consumers in connection with this Pilot. The Bureau shall determine the scope of this Pilot, and the process for identifying potential participants. The Bureau may issue public notices or engage with stakeholders as needed to obtain information necessary to establish this Pilot, and may make any necessary changes to the National Verifier to conduct the Pilot. Consistent with the current enrollment processes, the Bureau shall make sure that appropriate safeguards are in place for the Pilot to protect applicant's personally identifiable information. At the completion of the Pilot, the Bureau will send a report to the Commission summarizing the results of the Pilot.

56. *Eligibility Verifications Through Approved Service Provider Alternative Verification Processes.* As with the EBB Program, Affordable Connectivity Program providers using an approved alternative verification process must keep all documentation provided to them from the applicant used to make eligibility determinations for the document retention period specified herein.

57. *School-Based Eligibility Verifications.* Service providers relying on school-based eligibility verifications must collect and retain documentation of (1) the school providing the information; (2) the program(s) that the school participates in; (3) the household that qualifies (and qualifying student(s)) and (4) the program(s) the household participates in). Service providers must obtain parental consent for school-based eligibility verifications. The Commission directs USAC to conduct quarterly program integrity reviews to ensure that households enrolled based on school-based eligibility verification process are eligible for the ACP benefit.

## **5. Household Usage Requirements**

58. *Non-Usage Period and Cure Period.* The Commission adopts the Lifeline usage rules for the Affordable Connectivity Program. Under these rules, where a provider does not assess or collect a monthly fee from the subscriber for the supported service, the subscriber must use their service at least once every 30 days, and after 30 consecutive days of non-usage, the provider is required to notify the consumer that they will be de-enrolled if they do not cure their non-usage in 15 days. The Commission requires de-enrollment of ACP subscribers for non-usage. Providers are prohibited from claiming support for a subscriber who has not used their service in the last consecutive 30 days unless the subscriber cures their non-usage within 15 days.

59. The 30-day usage and 15-day cure period for the Lifeline program, for non-use of services where the end-user is not assessed and does not pay a fee, sufficiently balance consumer interests and fiscal responsibility for purposes of the Affordable Connectivity Program. The Commission also finds that there are significant benefits to applying a uniform subscriber usage requirement for both the Lifeline program and the Affordable Connectivity Program. Having inconsistent usage rules for Lifeline and the longer-term Affordable Connectivity Program would likely result in significant consumer confusion and complicate provider compliance given that many households will participate in both programs and certain households may use both benefits on the same service. Where a household uses a Lifeline benefit and an affordable connectivity benefit for the same service from the same provider, to avoid consumer confusion, upon the effective date of the subscriber usage requirements for the Affordable Connectivity Program, the provider should track each subscriber's non-usage using the same rolling 30-day period that it is using to track the subscriber's usage for Lifeline.

60. The Commission declines to limit the subscriber usage requirements to free-to-the-end-user wireless service because that approach would arbitrarily distinguish between free-to-the-end-user wireline and wireless service, while still allowing service providers to continue receiving an ACP benefit for free-to-the-end-user service where the subscriber is not actually using their service. The subscriber usage requirements apply to all modalities of free-to-the-end-user ACP service.

61. If the participating provider bills a subscriber on a monthly basis and collects or makes a good faith effort to collect any money owed within a reasonable amount of time, the subscriber will not be subject to the usage requirements. Participating providers that fail to take such steps and do not de-enroll subscribers pursuant to the non-usage requirements the Commission adopts for the Affordable Connectivity Program may be subject to enforcement action or withholding of support.

62. *Definition of Usage.* The Commission adopts the definition of usage under the EBB Program and Lifeline for the Affordable Connectivity Program. This definition lists other activities, aside from the subscriber's actual use of the supported free-to-the-end-user service, that are considered "usage" for purposes of the subscriber usage requirement. The Commission does not expand the list of activities that constitute usage to include activation of a modem because the activation of a modem without actual usage is not a strong indicator of a subscriber's intention to use their service and the risk of waste is too

great to justify the expansion of the definition of “usage” to include simply activating a modem without actual use of the supported service.

63. *Usage Tracking and Documentation Requirements.* Service providers are responsible for tracking subscriber usage and retaining appropriate usage documentation for purposes of compliance with the non-usage requirements of the Affordable Connectivity Program. The Commission directs the Bureau, the Office of Managing Director (OMD), and USAC to continue to use audits and program integrity reviews to monitor participating provider compliance with the subscriber usage requirements.

64. *Annual Subscriber Recertification Requirement.* The Commission adopts an annual (i.e., once per calendar year) recertification requirement to ensure the continued eligibility of participating households. ACP subscribers will be given 60 days to respond to a recertification effort. Subscribers who do not respond or fail ACP recertification shall be de-enrolled.

65. ACP households who are also enrolled in Lifeline may rely on their Lifeline recertification for purposes of the annual recertification requirement for the Affordable Connectivity Program, which will reduce administrative burdens for ACP households and participating service providers. Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program. The Commission also directs USAC to identify and implement ways to coordinate consumer recertification outreach for the two programs to minimize consumer response burdens and reduce the potential for consumer confusion.

66. For purposes of the annual recertification requirement, consistent with the approach in Lifeline, USAC will conduct recertifications for ACP subscribers whose eligibility was verified through the National Verifier processes and for whom the automated database connections in the National Verifier will be used whenever possible to recertify eligibility. The Commission directs USAC to make available an online form, paper form, and Interactive Voice Response (IVR) option for recertifying the eligibility of ACP subscribers whose eligibility cannot be verified through the National Verifier automated database connections. For USAC-conducted recertifications, USAC will be responsible for de-enrolling subscribers who do not respond or fail ACP recertification. For USAC-conducted subscriber recertifications, the Commission directs USAC to develop processes to inform participating providers

about the status of USAC's recertification efforts and results for their specific ACP subscribers.

67. For households who enrolled in the Affordable Connectivity Program based on an approved alternative verification process or school-based eligibility verification, service providers will be required to conduct the subscriber recertification. For households enrolled in both Lifeline and the Affordable Connectivity Program, for purposes of recertifying eligibility for Lifeline, subscribers can only be recertified through the National Verifier or State process for the Lifeline NLAD opt-out states as applicable. Where the National Verifier did not initially verify subscribers' eligibility (such as where a provider's approved alternative verification process includes eligibility criteria that are unique to the provider's low-income program or where the provider, but not USAC, has already established a process with specific schools to verify subscriber eligibility based on participation in a free and reduced price school lunch or breakfast program) but the service provider decides to stop using these non-National Verifier methods to verify subscriber eligibility, the service provider shall notify USAC of that decision and USAC will recertify the impacted subscribers. Service providers conducting recertification based on these non-National Verifier subscriber eligibility verification methods are required to collect and retain the necessary subscriber eligibility documentation. In addition, where service providers conduct subscriber recertifications for the Affordable Connectivity Program, they must de-enroll subscribers who do not respond or are no longer eligible.

68. For purposes of this annual recertification requirement, new ACP subscribers who enrolled on or after December 31, 2021, will not be required to recertify their ACP eligibility until 2023. Legacy EBB subscribers who transitioned to the Affordable Connectivity Program will need to recertify their eligibility for the ACP by December 31, 2022. Legacy EBB Program subscribers who qualified for the EBB Program based on substantial loss of income or a provider's COVID-19 Program and already demonstrated their ACP eligibility before the end of the 60-day transition period will not be required to recertify for purposes of the Affordable Connectivity Program requirements again until 2023.

## **6. De-enrollments**

69. The Commission adopts for the Affordable Connectivity Program the same de-enrollment rules it adopted for the EBB Program and the Lifeline program, and continues to allow USAC to directly process de-enrollment requests from subscribers. For general de-enrollments and de-enrollments for

duplicative support, service providers must process the de-enrollment within five business days after the expiration of the subscriber's deadline to demonstrate eligibility, or within five business days of notification from the Administrator that the subscriber is receiving more than one benefit per household. For de-enrollments initiated by the subscriber, the service provider must de-enroll the subscriber within two business days after the de-enrollment request.

70. ACP households who are subject to the usage requirement and do not cure their non-usage within 15 days must be de-enrolled, and subscribers who do not respond or fail recertification must also be de-enrolled. For de-enrollments for no response or failure to recertify, service providers must de-enroll the subscriber within five business days of the subscriber's time to respond to the recertification efforts. As with Lifeline and the EBB Program, when a service provider de-enrolls a subscriber from the Affordable Connectivity Program, the service provider must transmit to the NLAD the date of the Affordable Connectivity Program de-enrollment within one business day of de-enrollment.

### **C. Covered Services and Devices**

71. *Services.* The Infrastructure Act permits eligible households participating in the Affordable Connectivity Program to receive a discount off the cost of broadband service and certain connected devices, and participating providers to receive a reimbursement for providing such discounts. The Infrastructure Act defines "internet service offering" as broadband internet access service provided to a household by a broadband provider, and retains the definition of broadband internet access service provided in 47 CFR 8.1(b). The Infrastructure Act further provides that the "affordable connectivity benefit" means a "monthly discount for an eligible household applied to the actual amount charged to such household." The Commission interprets the Infrastructure Act's reference to a "monthly discount . . . applied to the actual amount charged" to exclude broadband service products that are based primarily on the data allowance of the product (for example, a purchase of 1 GB of data for \$5.00) and are sold separate from a monthly recurring service plan. The Infrastructure Act's application of the affordable connectivity benefit as a monthly discount off the actual amount charged to the subscriber means that service plans that are already offered with no fee to the end user—for example, as a result of Lifeline program support or other benefit programs—are not eligible for additional or duplicative support from the Affordable Connectivity Program.

72. The Infrastructure Act adds a requirement that a participating provider “shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.” The Commission interprets “any internet service offering,” for any particular customer, to include any broadband internet plan in which the customer is currently enrolled (regardless of whether it is a legacy grandfathered plan) as well as any broadband internet plan that a provider currently offers to new customers. The requirement that legacy or grandfathered plans be eligible for reimbursement does not require that providers offer such legacy or grandfathered plans to other customers, including ACP-eligible customers, that are not already on such plans. However, providers may not exclude any of their generally available or actively sold internet service offerings from the affordable connectivity benefit.

73. Due to the volume and unique complexities of coding and including legacy or grandfathered plans in the Affordable Connectivity Program, the Commission finds that providers should have an additional 60 days after publication of the Order in the Federal Register to complete necessary changes and ensure that the affordable connectivity benefit can be applied to all generally available and currently sold plans. While providers must also allow existing subscribers to apply the affordable connectivity benefit to legacy or grandfathered plans, the Commission considers this requirement satisfied if providers accommodate requests by existing subscribers to apply the affordable connectivity benefit to legacy or grandfathered plans on a case-by-case basis no later than 60 days after the request.

74. Taxes and governmental fees may be included as part of the reimbursable internet service offering, since they are part of the “amount charged” to a consumer. By allowing the benefit to be applied to taxes and governmental fees, providers can extend to consumers \$30 “all-in” broadband offers that include taxes and governmental fees and can avoid charging small bills for taxes and fees alone.

75. The Commission finds that the Infrastructure Act’s requirement that providers allow an eligible household to apply the Affordable Connectivity Program benefit to “any internet service offering of the participating provider, at the same terms available to households that are not eligible households” does not preclude providers from making internet service offerings that are only available to ACP subscribers, provided that the terms are at least as good as plans that are available to non-eligible households, and that providers cannot prevent subscribers from applying the affordable connectivity



benefit to other available internet service offerings or restricting such internet service offerings in any way. However, to ensure minimal disruption to existing billing systems and processes, the Commission declines to require that providers participating in the Affordable Connectivity Program make available plans not available in a given geographic area that they offer elsewhere.

76. The Commission will collect data on the service plan characteristics—such as upload and download speeds, data allowances, and co-payment—associated with a subscriber’s service plan, so it can gauge whether the Affordable Connectivity Program is providing value to households beyond what the Lifeline program offers and whether that value is in-line with market rates for broadband services, due to the immense value such data could provide. The Commission directs the Bureau and the Office of Economics and Analytics (OEA), with support from USAC, to determine appropriate avenues to collect service plan characteristics, such as possible future modifications to NLAD or conducting a provider survey, and the specific information that service providers must submit. The Commission directs the Bureau and OEA to balance the value of the information collected against the burden to service providers and must limit their efforts to those necessary to carry out the purposes of the Affordable Connectivity Program. Consumers would benefit from knowing which providers offer plans fully covered by the household discount and the availability of such plans in their area, so, the Commission directs USAC to make available, where possible, information about the availability of plans fully covered by the household discount. In doing so, USAC should consider planned information collections as well as other avenues for collecting this information while minimizing burden to providers.

77. *Minimum Service Standards.* Congress intended that “any internet service offering” be eligible for support in the Affordable Connectivity Program, 47 U.S.C. 1752(b)(7), and imposing minimum service standards would contradict the Infrastructure Act. Internet service offerings must include a broadband connection (as defined in 47 U.S.C. 1752(a) (8))—fixed or mobile—that permits households to rely on these connections for the purposes essential to telework, remote learning, and telehealth.

78. *Bulk purchasing arrangements and Multiple Dwelling Units (MDUs).* Eligible households that live at a single address, such as senior and student living, mobile home parks, apartment buildings, and Federal units, and that receive service as part of a bulk billing arrangement where the

households are not directly billed for services by their internet service provider, but instead pay a monthly fee for broadband services to their landlord, should be permitted to participate in the Affordable Connectivity Program. In those situations, the participating provider claiming reimbursement must retain documentation demonstrating that the amount claimed by the provider is fully passed through to the eligible household as a discount off the monthly price that the eligible household otherwise would have paid to the bulk purchaser. Providers are required to retain documentation demonstrating the identity of the entity or entities through which the discount was passed, the eligible households who received the service, and consent by the eligible household allowing the participating provider to seek reimbursement. Homeless shelters, school districts, and libraries can also be considered bulk purchasers and allowed in the Affordable Connectivity Program, provided that the arrangements are set up in compliance with this Order.

79. Reimbursement will be permissible in MDUs—as it is with the typical provider/household relationship—where applying the affordable connectivity benefit to the household’s broadband bill will result in the household not having a cost for broadband. In cases where the household does not pay a fee for the service, either to the provider or a bulk purchaser/aggregator, but the fee is paid by another entity, the service cannot be claimed for Affordable Connectivity Program support. However, if the household stops having the third party pay for the household’s bill and instead seeks the discount through the Affordable Connectivity Program, the provider may seek reimbursement for the service.

80. In many cases, an MDU such as a large apartment building may have Wi-Fi deployed to an entire building as the broadband internet available to its residents. Such service qualifies as broadband internet access service eligible for reimbursement in the Affordable Connectivity Program, but eligible households must be charged a monthly fee for such service to be reimbursable.

81. A certification by the bulk purchasing entity that the discount from the service provider is fully passed through to the eligible households located in the MDU is not sufficient to demonstrate compliance with program rules. Documentation serves a critical role to protect against abuse in the program, and documentation requirements are particularly important where there is not a direct relationship between the broadband provider and the eligible household. The Commission therefore declines to allow a certification from the bulk purchaser as evidence that the discount has been passed

through to the eligible household.

82. *Bundled Service Offerings.* Bundled service offerings such as those offering voice, data, and texting could be eligible for the affordable connectivity benefit, but the full benefit will not be allowed to be applied to the full price of broadband-bundled video service. While reimbursement cannot go toward the whole value of a bundle that includes video, the data, voice, and/or text messaging portions of the bundle can be reimbursable, but the video portion of any bundle must be apportioned out before determining the amount that is reimbursable for broadband purposes of the Affordable Connectivity Program. Fixed and mobile bundled services can be supported by the Affordable Connectivity Program, with the understanding that households with such bundles will only be entitled to a single benefit.

83. *Associated Equipment and Other Customer Premises Equipment.* The affordable connectivity benefit discount must be provided for internet service and associated equipment necessary for the transmission functions of the supported internet service offering, including monthly rental costs for equipment such as modems, routers, and hotspot devices and antennas. Associated equipment should be eligible to be reimbursed as part of the service benefit.

84. *Connected Devices.* A participating provider that provides an ACP-supported broadband service to a household may be reimbursed up to \$100 for a connected device delivered to the household, provided that the charge to such eligible household is more than \$10 but less than \$50 for such connected device (defined in the statute as a laptop, desktop computer, or a tablet). Because the statute does not include cellular phones or smartphones in the definition of “connected devices,” a connected device cannot include devices that can independently make cellular calls such as large phones or “phablets.”

85. *Minimum System Requirements for Connected Devices.* A connected device supported by the Affordable Connectivity Program must support video conferencing platforms and other software essential to ensure full participation in online learning, be Wi-Fi enabled, have video and camera functions, and be accessible to and usable by those with disabilities. The device must be able to connect to all Wi-Fi access points and cannot be limited to use with any specific service provider.

86. *Application of Section 54.10.* The requirements of 47 CFR 54.10 apply to the Affordable Connectivity Program. Thus, Affordable Connectivity Program funds cannot be used to purchase or obtain a connected device (*i.e.*, laptop, desktop computer, or tablet) that is on a Covered List—*i.e.*, “poses

an unacceptable risk to the national security of the United States or the security and safety of United States persons.” 47 CFR 1.50002(b)(1). Providers must certify that the connected device that they are seeking reimbursement for complies with 47 CFR 54.10.

## **D. Reimbursement**

### **1. Reimbursement for the Affordable Connectivity Benefit**

87. The Commission adopts in its rules the Infrastructure Act’s \$30.00 standard monthly discount and reimbursement rate. To be reimbursed, providers are required to submit a reimbursement request based on the number of subscribers enrolled in NLAD on the snapshot date. Providers must review the snapshot report, validate the subscribers for which they are requesting reimbursement, indicate a reason for any unclaimed subscribers, and review, correct, and certify the requested reimbursement amount. The Commission will use the Lifeline Claims Systems to manage the reimbursement process for the Affordable Connectivity Program and will apply the uniform snapshot date approach for capturing the subscribers enrolled in NLAD on the first of the month that are eligible to be claimed for that month. The Commission declines to permit partial month, pro-rated reimbursement at this time.

88. The Commission requires that, when applying the affordable connectivity benefit to a Lifeline service, providers first apply the full Federal Lifeline subsidy and then the Federal affordable connectivity benefit. States may offer their own Lifeline and/or other broadband affordability benefits, and the Commission will defer to any State on how that additional benefit should be applied in conjunction with the Federal affordable connectivity benefit.

89. To ensure that providers have sufficient time to submit certified reimbursement claims and USAC can administer the program efficiently, providers are allowed six months from the uniform snapshot date, or the following business day in the event six months falls on a weekend or holiday, to submit to USAC their certified reimbursement claims for both service and connected device support for households captured on the snapshot report.

90. Providers may submit upward revisions to their certified claims within the same six-month time period after the snapshot date that certified reimbursement claims are due. Providers must disclose non-compliant conduct and return improperly received funds from this Program to the Commission and can submit downward revisions beyond the six-month time period. Moreover, providers

cannot delay contacting USAC about the need to repay improperly received funds or downwardly revise their claims if they become aware of an improper payment.

91. The Commission delegates to the Bureau and OMD the authority to establish a different timeline to submit certified reimbursement claims and revisions to such claims as a result of projections and forecasts of when the Affordable Connectivity Fund is winding down or to the extent necessary to comply with government-wide Federal financial statutes and/or U.S. Treasury procedures. *See, e.g.*, 31 U.S.C. 3528; *see also* 47 CFR 0.11(a)(3)-(4), (a)(8) (scope of OMD's delegated authority); 47 CFR 0.5(e) (requiring Bureau and Office coordination with the Office of the Managing Director on recommendations "that may affect agency compliance with Federal financial management requirements").

92. *Tribal Lands Benefit.* The Affordable Connectivity Program retains the enhanced, \$75.00 per month subsidy for eligible households located on Tribal lands. The Commission uses the same definition of Tribal lands as used in the Lifeline and EBB Programs, including certain lands near the Navajo Nation treated as Tribal lands. Existing USAC processes will be used to verify eligibility of households on Tribal lands. The definition of Tribal lands from Lifeline includes any land designated as such pursuant to the designation process in 47 CFR 54.412.

93. The Infrastructure Act provides for a separate enhanced benefit for households that are served by providers in high-cost areas. 47 U.S.C. 1752(a)(7)(B). The Commission seeks comment on the implementation of this enhanced benefit in the Further Notice of Proposed Rulemaking.

94. *Certification Requirements.* The Infrastructure Act requires providers to certify that each household for which the provider is seeking reimbursements will not be charged an early termination fee if it later terminates a contract, that each household was not subject to a mandatory waiting period, and that each household will be subject to a participating provider's generally applicable terms and conditions. Providers are also required to certify that each household for which the provider is claiming reimbursement for a connected device discount has been charged the required co-pay. . Providers claiming a household whose eligibility was determined by the provider's alternative verification process must also certify that such households were verified by a process that was designed to avoid waste, fraud and abuse. The Commission requires that these certifications accompany each request for reimbursement by participating providers, that each certification be submitted under penalty of perjury, and that the

provider it has not charged and will not charge the household for the amount the provider is seeking for reimbursement. The Commission directs USAC to make any adjustments necessary to the LCS to ensure that providers are prompted to certify the statements included in 47 U.S.C. 1752(b)(6).

## **2. Reimbursement for Connected Devices**

95. A provider may not receive reimbursement for more than one connected device per household, 47 U.S.C. 1752(b)(5), and a household that received a connected device through the EBB Program may not receive another through the Affordable Connectivity Program.

96. A market value-based approach will be used for reimbursement of connected devices, with the enhanced accountability requirements discussed following. Under the market-based approach, providers may be reimbursed up to the statutory \$100 limit, provided that the amount of reimbursement together with the co-pay does not exceed the market value of the connected device. 47 U.S.C. 1752(b)(5). Providers that seek device reimbursement through the Affordability Connectivity Program will be required to submit device characteristics as well as characteristics and retail price information about analogous devices. The price information from at least one of these analogous devices must be available from a major retailer, such as Amazon, Apple, B&H, BJ's, Barnes and Noble, Best Buy, Lenovo, Micro Center (Micro Electronics), Microsoft, Newegg, Office Depot, Office Max, Sam's Club, Samsung, Staples, Target, TigerDirect, and Walmart (not including third-party sellers on any of these retailers' websites). If a provider is unable to submit such information about comparable products, it will be required to substantiate its claim for the market value.

97. Providers seeking to claim reimbursement for connected device discounts must submit information regarding the device supplied to the household prior to claiming reimbursement for a connected device. The provider must submit information to USAC about device type, device make, device model, device characteristics (e.g., screen size, storage, memory), subscriber ID of the household that received the device, date the device was delivered to the household, method used to provide the device (shipped, in store, or installed by provider), market value of the device, amount paid by the household to the provider for the device, and supporting documentation. The Commission also directs USAC to adjust the reimbursement amount for any connected device claim if the market value asserted by

the provider does not reflect market value as compared to analogous devices offered by other participating providers or publicly available information.

98. Providers seeking reimbursement for a connected device must certify, under penalty of perjury, that the reimbursement claim for the connected device plus the co-pay amount collected from the customer does not exceed the device's market value. In addition, providers are required to retain any materials that document compliance with these requirements and demonstrate the accuracy of the information provided to USAC and make them available for inspection upon request.

99. Participating providers must actually charge the household a co-payment of more than \$10 but less than \$50 before they can receive reimbursement of up to \$100 for a connected device. Providers are required to retain documentation proving that the eligible household made a compliant financial contribution towards the cost of the connected device, as well as the amount thereof, before the provider seeks reimbursement. Providers must update their election notices to include information on device type, device make, device model, and wholesale cost of the device. Proof of consumer payment of the appropriate co-pay amount must be provided upon request by USAC, the Bureau, the Enforcement Bureau (EB), or any other program auditor or investigator.

100. A provider may seek reimbursement for a connected device provided to a household that had been receiving an ACP-supported service from that provider at the time the device was supplied to the household, even if the household subsequently transfers its ACP service benefit to a different provider. The Commission directs USAC to maintain the connected device dispute process implemented for the EBB Program.

## **E. Consumer Protection**

### **1. Credit Check Prohibition**

101. The Infrastructure Act prohibits providers from "requir[ing] the eligible household to submit to a credit check in order to apply the affordable connectivity benefit." 47 U.S.C.

1752(b)(7)(A)(ii). The Commission finds that this provision bars providers from considering the results of a credit check before deciding to enroll a household in the Affordable Connectivity Program, but it does not prohibit a provider from running credit checks that are routinely used as part of the provider's sign-up process for all consumers. Providers may not use credit check results to determine to which

ACP-supported internet service plan an eligible household can apply their affordable connectivity benefit, to restrict the type of plans available to a household, or to decline to transfer a currently enrolled household's affordable connectivity benefit.

102. The Infrastructure Act does not prevent providers from running a credit check or from using the results of the credit check in other circumstances unrelated to the affordable connectivity benefit. The credit check provision does not prohibit providers from relying on the results of a credit check for an ACP-eligible household to determine the devices and equipment not supported by the Affordable Connectivity Program that may be offered to the household. The statute does not prohibit providers from using credit checks to determine a household's eligibility to access bundled services so long as the credit check is used to determine eligibility to receive the service that is not eligible for the affordable connectivity benefit and the household can receive the broadband component of the bundle on a standalone basis regardless of the results of the credit check. Finally, the Infrastructure Act's credit check provision should not be interpreted as preventing providers from running a credit check consistent with the requirements of the Federal Trade Commission's "Red Flag Laws."

## **2. Non-Payment**

103. The Infrastructure Act specifies that "a participating provider [may] terminat[e] the provision of broadband internet access service to a subscriber after 90 days of nonpayment." 47 U.S.C. 1752(b)(7)(A)(ii). The 90 consecutive days of non-payment commences on the due date of the bill where payments made after that point for ACP-supported services would be past due. A bill is not considered "unpaid" – and thus, there is no "nonpayment" – until after the payment due date specified on the bill has passed and the subscriber has failed to satisfy the obligation to pay the bill in a timely manner. Accordingly, for purposes of 47 U.S.C. 1752(b)(7)(B), the 90-day period of "nonpayment" begins on the due date specified on the bill when the bill may be deemed "unpaid" and late fees may begin to accrue. This provision does not apply to prepaid plans because prepaid customers do not receive invoices and are not expected to pay at monthly intervals.

104. The Commission interprets the provision that allows providers to terminate service after 90 days of non-payment, in conjunction with the requirement that providers cannot decline to enroll an eligible household based on any "past or present arrearages with a broadband provider," to mean that



although a provider may terminate a household's broadband service after 90 days of non-payment, the provider cannot deny a household's re-enrollment based on past or present arrearages. When providers re-enroll ACP households whose service is terminated for non-payment, they may limit the offerings made available to the household to offerings that would be fully covered by the affordable connectivity benefit and any other applicable benefit, such as Lifeline, will protect consumers and providers by limiting the accrual of any additional ACP-related debt. Households that are downgraded from their current grandfathered or legacy plan must be permitted to return to that grandfathered or legacy plan at a later time. However, a provider may decline to return a household to a grandfathered or legacy plan if the provider would have been within its rights to remove the household from that plan irrespective of that household's participation in Affordable Connectivity Program. Limiting the plans available to a household as described here would not constitute inappropriate downselling.

105. The Commission clarifies that the termination for non-payment is limited to debts associated with any out-of-pocket expenses for the ACP-supported service, and providers should not consider any non-payment associated with non-ACP supported services, EBB-supported service, or other debt that predates the Affordable Connectivity Program.

106. Providers may downgrade a household to a lower-priced service plan once the consumer enters a delinquent status after the bill due date to mitigate the non-payment amount upon advance notice to the household of the change in service. Such a transfer of a household in non-payment status to a lower-priced service plan in order to mitigate the non-payment does not constitute inappropriate downselling.

107. A provider must take apply the affordable connectivity benefit to a household's account no later than the start of the first billing cycle after the household's enrollment. A provider must pass through the discount in order to claim reimbursement for the discount in the Affordable Connectivity Program. Providers may not, for example, charge a customer for the internet service offering, certify a claim for reimbursement, and then later provide the discount to the customer only after receiving the reimbursement. Failure to comply with these rules may result in administrative forfeitures or other penalties.

108. A provider cannot de-enroll a household for non-payment if the provider has failed to

timely apply the benefit to the household's bill consistent with this Order. To track households that could be de-enrolled for non-payment associated with the ACP-supported service, as well as to support tracking households which would be subject to the non-usage rules, the Commission directs USAC to collect from providers information regarding whether a household is assessed and charged a fee for the ACP-supported service. Providers must certify, under penalty of perjury, that the affordable connectivity benefit was in fact applied to the households for which the provider is submitting a claim for reimbursement. Providers must document and retain proof that the program benefit was in fact applied to the household's account prior to the provider submitting a claim for reimbursement for that household.

109. Participating providers must give adequate notice to a household of their delinquent status before terminating the household's service for non-payment. The provider must provide the household written notice of the possible termination 60 and 30 days prior to the termination date, which must be set from the due date of the bill. The written notice must include the balance due to the provider, the due date for the outstanding balance, the last date of service if the outstanding balance is not paid, instructions for payment, and the provider's customer service phone number. Notice must also be provided in formats accessible to individuals with disabilities, and may be delivered via email, mail, billing insert or statement, or text message. Providers must retain documentation of notice sent to the household before the household is disconnected for non-payment. Households that dispute an allegation of non-payment with the provider may file a complaint with the FCC's Consumer Complaint Center.

### **3. Consumer Complaint Process**

110. *Dedicated ACP Complaint Process.* The Infrastructure Act requires the Commission to establish a dedicated complaint process for Affordable Connectivity Program participants to file complaints about the compliance of participating providers with program rules and requirements, including complaints "with respect to the quality of service received under the Program." 47 U.S.C. 1752(b)(9)(A). The Commission is adding a dedicated pathway within its existing consumer complaint process in the Consumer Complaint Center to file ACP-related complaints, including notification to providers that the complaint involves the Affordable Connectivity Program, clear direction to consumers on how to correctly file an ACP complaint, and dedicated FCC staff from Consumer and Governmental Affairs Bureau (CGB) to review and process the complaints.

111. *Provision of Information on the Dedicated ACP Complaint Process.* The Infrastructure Act also requires participating providers to provide Affordable Connectivity Program participants with information on the Commission’s dedicated complaint process. 47 U.S.C. 1752(b)(9)(B). The Commission requires participating providers to prominently display the Commission’s contact center phone number and the website address for the Consumer Complaint Center on the subscriber’s bill and on the provider’s ACP webpage. The Commission also requires participating providers to inform consumers of their right to file a complaint with the Commission regarding an ACP-supported service or any difficulty enrolling with the provider. Participating providers must provide this information to ACP consumers in the formats proposed in the *ACP Public Notice*. *ACP Public Notice*, 86 FR at 74043, para. 87 *Reports Regarding Consumer Complaints*. The Infrastructure Act also requires the Commission to regularly issue public reports regarding consumer complaints alleging provider non-compliance with the Affordable Connectivity Program rules. 47 U.S.C. 1752(b)(9)(D). The Commission directs CGB, in coordination with the Bureau, to regularly issue public reports regarding consumer complaints alleging provider non-compliance with ACP rules, to make these reports available to the public via the FCC website, and, in coordination with the Bureau and the Senior Agency Official for Privacy, to ensure that any personally identifiable information (PII) be excluded from complaint reports and data made publicly available to ensure compliance with the Privacy Act, 5 U.S.C. 552a.

112. *Investigations and Enforcement.* The Infrastructure Act also requires the Commission to act expeditiously to investigate potential violations of program rules and requirements and enforce compliance, and it permits the Commission to impose forfeiture penalties to enforce compliance. 47 U.S.C. 1752(b)(9)(C)(i)-(ii). The Commission will use its existing, statutorily permitted enforcement powers to initiate investigations of program rule violations and directs EB, in coordination with the Bureau and law enforcement as applicable, to expeditiously investigate potential violations of and enforce the ACP rules.

#### **4. Additional Consumer Protections**

##### **a. Administrative Procedure**

113. The Infrastructure Act directs the Commission to promulgate certain specific consumer protection rules “after providing notice and opportunity for comment in accordance with [5 U.S.C.] 553,”

which sets forth the rulemaking requirements of the Administrative Procedure Act (APA). 47 U.S.C. 1752(b)(11)(A). At the same time, 47 U.S.C. 1752(h) provides an exemption from APA requirements for “regulation[s] promulgated under subsection (c),” and 47 U.S.C. 1752(c) requires that the Commission “promulgate regulations to implement” these requirements by a date “not later than 60 days after enactment of this Act” and specifies initial comment and reply comment periods of 20 days each.

114. The Commission believes that there is no irreconcilable conflict between these provisions and that, read together, they support the adoption of the 47 U.S.C. 1752(b)(11) consumer protection rules here. By referring to the APA specifically in 47 U.S.C. 1752(b)(11), Congress intended to emphasize that the Commission should carefully consider the input of commenters in crafting the consumer protection rules. Given the tight, statutorily mandated timeframe for standing up the Affordable Connectivity Program and the essentiality of consumer protection rules to the proper functioning of the program, the Commission finds that the notice and comment process the Commission has provided, in accordance with 47 U.S.C. 1752(c), is sufficient to satisfy the APA requirements in 5 U.S.C. 553(b). The *ACP Public Notice* was published in the Federal Register on December 29, 2021 (*see* 86 FR 74036) and it contains the information specified in section 553(b)(1)-(3), including detailed questions about the particular inappropriate practices referenced in 47 U.S.C. 1752(b)(11). Given the requirements in the Act to commence the rulemaking implementing the Affordable Connectivity Program within five days of the enactment of the Act and to adopt program rules within 60 days, and the inextricable relationship between the consumer protection rules and the other components of the program, the Commission finds that it has satisfied the notice requirement in 5 U.S.C. 553(b), as well as the requirements in 5 U.S.C. 553(c) to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments” and to “consider[] the relevant matter presented” in those submissions when formulating the consumer protection rules.

115. Moreover, in the alternative, to the extent the procedures required by 47 U.S.C. 1752(c) cannot be squared with the process required by 47 U.S.C. 1752(b)(11), the Commission finds “good cause” to depart from the standard APA notice and comment procedures because placing the consumer protection rules on a delayed track would be “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B). It would be impracticable and contrary to the public interest to adopt

consumer protection rules using procedures that would operate more slowly than those the Commission use to adopt the rules implementing other aspects of the Affordable Connectivity Program. The consumer protection rules are among the core components of the program, and allowing the rest of the program to take effect without having the statutorily-mandated consumer protections in place at the outset of the program would undermine the overall scheme. The Affordable Connectivity Program will enable eligible consumers to apply the Affordable Connectivity Benefit to “any” internet service offering of a participating provider, 47 U.S.C. 1752(b)(7), and consumers could effectively be denied that entitlement if participating providers were allowed to engage in harmful business practices that could trap consumers in poor service and deny households of the full benefit and freedom to choose an appropriate service. *See* 47 U.S.C. 1752(b)(11)(A). Consistent with this determination, the Commission also finds under the Congressional Review Act that there is good cause to expedite the effective date of these rules and not to delay their effective date for 60 days pending Congressional review. *See* 5 U.S.C. 808(2).

**b. Consumer Protection Requirements Pursuant to 47 U.S.C.  
1752(b)(11)**

116. *Upselling and Downselling.* The Infrastructure Act requires the Commission to promulgate rules prohibiting any inappropriate upselling or downselling by a participating provider. 47 U.S.C. 1752(b)(11)(A)(i). Inappropriate upselling in the context of the Affordable Connectivity Program is any business practice that pressures a prospective or existing subscriber to purchase a service plan or bundled plan in addition to or that is more expensive than what the subscriber initially sought. For example, requiring a household to select or switch to a higher-cost service plan with their existing provider before the provider will enroll the household or before the provider will apply the affordable connectivity benefit to the household’s account constitutes inappropriate upselling and is prohibited. Similarly, if a provider offers a particular broadband service offering either as part of a bundled plan with other services or on a stand-alone basis, the provider may not require an eligible household to purchase the bundled plan or any other services included in the bundle as a mandatory condition in order to select that broadband internet access service plan for purchase or application of the affordable connectivity benefit. Nor may the provider exert pressure on the household to purchase the bundled plan or the other services included in such a plan, rather than the individual broadband internet access service on a stand-

alone basis. And even if a particular type of modem, router, or other associated equipment is technically necessary in order to use a specific type of broadband internet access service, a participating provider may not compel or pressure an eligible household to purchase or rent such equipment from the provider in conjunction with selecting (or applying the benefit to) that type of service if the needed equipment is also available from other vendors and the household could opt to obtain it from someone other than the provider.

117. However, communicating information regarding higher-speed or higher-priced service tiers is not in itself prohibited upselling in the absence of further evidence. In fact, given the monthly subsidy available in the program, a fully informed consumer may choose to subscribe to a more expensive plan that better meets the needs of the household. To ensure that consumers are sufficiently informed of the available options, the Commission requires providers to inform prospective and current subscribers seeking to enroll in the Affordable Connectivity Program or seeking to change service plans of all ACP-supported plans available in the household's service area that are fully covered by the affordable connectivity benefit. Such plan information is required to be presented along with the required disclosures a provider must present to households prior to enrollment, described further following. The creation or promotion of new service plans specially priced for eligible households in the Affordable Connectivity Program does not constitute inappropriate upselling.

118. Inappropriate downselling in the context of the Affordable Connectivity Program is any business practice that pressures a subscriber to lower the quality of broadband service (such as reducing bandwidth or speed, or adding or lowering data caps that would not meet the participating household's needs) to the benefit of the provider rather than the consumer. Not all downselling should be prohibited: merely suggesting or mentioning the availability of a lower-price service plan(s) that would satisfy consumers' broadband needs is permitted. However, certain practices may constitute inappropriate downselling and should be prohibited to avoid potential consumer harm. Specifically, the Commission prohibits a provider from requiring a prospective or current household to change to a lower-cost service plan or to choose from a set of specific low-cost service plans before permitting the household to enroll in the program or before applying the affordable connectivity benefit to the household's account. Inappropriate downselling also includes business practices that aim to benefit the provider (such as

minimizing the provider's out-of-pocket expenses) with no actual benefit to the consumer. For example, suggesting only low-quality service plans with a low data cap or low speed simply to benefit the provider and without regard to consumer need would be prohibited inappropriate downselling.

119. *Extended Service Contracts.* The Infrastructure Act requires that the Commission promulgate rules that would protect ACP consumers from any inappropriate requirements that a consumer opt-in to an extended service contract as a condition of participating in the Affordable Connectivity Program. 47 U.S.C. 1752(b)(11)(A)(i). While not all extended service contracts are prohibited in the Affordable Connectivity Program, providers are prohibited from requiring agreement to an extended service plan as a condition of receiving the affordable connectivity benefit. An extended service contract is typically an offer of service at a discount price in exchange for a commitment from the subscriber to remain on that service plan for a set period of time, usually at least a year. Typically, a breach of an extended service contract would result in early termination fees. Congress recognized that consumers should be able to apply the ACP benefit to any available service plan and some participating providers offer plans with extended service contracts. However, conditioning a household's enrollment in the Affordable Connectivity Program or application of the program benefit to the household's account on agreement to an extended contract or continuing service with the provider is prohibited. Where an ACP household elects an extended service contract, the Commission requires the provider to notify the household that it may change its service at any time without incurring an early termination fee, as such fees are prohibited by the Infrastructure Act. 47 U.S.C. 1752(b)(6)(A)(i). In addition, providers must disclose all material terms to ACP households prior to enrollment, including but not limited to the price of service and the conditions for breach.

120. *Restrictions on Switching Service Offerings.* The Infrastructure Act requires the Commission to promulgate rules to protect consumers from inappropriate restrictions imposed by a participating provider on the consumer's ability to switch internet service offerings. 47 U.S.C. 1752(b)(11)(A)(iv). The Commission prohibits providers from imposing restrictions on switching internet service offerings. However, it is not inappropriate for a provider to limit a household that is in non-payment status to service plans covered by the full benefit amount, as discussed preceding.

121. *Restrictions on Switching Providers.* The Infrastructure Act also requires the

Commission to promulgate rules to protect consumers from any inappropriate restrictions by a participating provider on the ability of the household to switch participating providers other than a requirement that the household return customer premises equipment provided by the participating provider. 47 U.S.C. 1752(b)(6)(A)(i)-(iii). The Commission prohibits any provider practice that is reasonably likely to cause a household to believe that they are prohibited or restricted from transferring their benefit to a different provider. Examples include, but are not limited to: misrepresenting or failing to accurately disclose to a household the rules and requirements regarding transfers in the Affordable Connectivity Program as set out further following; charging a fee to the household for transferring their benefit to another provider; or suggesting that the provider may change the consumer's service plan if they transfer their benefit to another provider.

122. The Commission declines at this time to prohibit providers from recouping any forgone reimbursements as a result of the consumer transferring to another provider before the snapshot date for that service month, but cautions that providers must not impose or threaten to impose any fees or penalties to discourage or disincentivize a consumer from transferring their ACP benefit. The Commission finds that limiting subscribers to one transfer a month, coupled with the strengthening of the consent and disclosure requirements related to transfers, should reduce the number of unwanted transfers and will empower consumers to make an informed decision about whether to transfer their benefit. Therefore, the Commission finds that at this time, preventing providers from recovering discounts that are unable to be claimed solely as a result of the transfer is unnecessary to protect consumers from the consequences of the transfer.

123. *Unjust and Unreasonable Practices.* The Infrastructure Act requires the Commission to promulgate rules related to unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program. 47 U.S.C. 1752(b)(11)(A)(v). To protect ACP households against service provider activities that would undermine the purposes, intent or integrity of the Affordable Connectivity Program, the Commission requires providers to enroll an eligible household as soon as practicable once the provider receives the household's affirmative consent to enroll with that provider for the Affordable Connectivity Program. Providers are further required to apply the affordable connectivity benefit to the household's account promptly.



124. A provider is prohibited from advertising or holding itself out as a participating provider if it is not in fact permitted to participate in the Program. The Commission also prohibits providers from engaging in false or misleading advertising of the Affordable Connectivity Program. Failure to timely provide the service, equipment, or devices that are advertised, promoted, or marketed is an unjust and unreasonable practice and is a violation of the Affordable Connectivity Program rules. Providers must deliver any connected devices under the program within 30 days of affirmative consent to receive the device from the household.

## **5. Disclosures and Consumer Consent**

125. *General Disclosure Requirements.* The Commission finds that requiring certain disclosures prior to enrolling consumers in the Affordable Connectivity Program is necessary to ensure that eligible consumers are fully informed of their rights and the terms and conditions for their service before enrollment in the Affordable Connectivity Program. The disclosure requirements the Commission adopts for the Affordable Connectivity Program must be satisfied before participating providers enroll an eligible consumer in the NLAD, and they apply regardless of whether the eligible consumer currently receives service from the provider (such as an existing Lifeline service) or will begin receiving service after enrollment, or after service provider transfer, in the Affordable Connectivity Program.

126. The required disclosures can be provided orally or in writing, and must convey the following information in clear, easily understood terms that: (1) the Affordable Connectivity Program is a government program that reduces the customer's broadband internet access service bill; (2) the household may obtain ACP-supported broadband service from any participating provider of its choosing; (3) the household may apply the ACP benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for ACP-supported service; (4) the provider may disconnect the household's ACP-supported service after 90 consecutive days of non-payment; (5) the household will be subject to the provider's undiscounted rates and general terms and conditions if the program ends, if the consumer transfers their benefit to another provider but continues to receive service from the current provider, or upon de-enrollment from the Affordable Connectivity Program; and (6) the household may file a complaint against its provider via the Commission's Consumer Complaint Center. If the provider offers a connected device through the Affordable Connectivity Program, the disclosures

must also include language stating that the household does not need to accept the device in order to enroll in the program. Providers must also inform consumers about the provider's ACP-supported service plans that are fully covered by the applicable affordable connectivity benefit amount to guard against inappropriate upselling. Providers must retain all documentation or recordings of written or oral disclosures made to consumers in connection with ACP enrollment, as well as any other oral or written notifications and consumer disclosures required by the ACP rules consistent with the ACP recordkeeping requirements, and make them available for inspection upon request. Standardized language for the required consumer disclosures would ensure that all providers share the same language with eligible consumers prior to enrollment. Accordingly, the Commission directs the Bureau, in coordination with EB and CGB, to adopt a standard disclosure statement that all providers will be required to use.

127. *Consumer Consent to Enroll in the Affordable Connectivity Program.* Before enrolling a consumer in the Affordable Connectivity Program, participating providers must obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to enroll with the provider. As with the required disclosures, the Commission finds that having uniform text for these consents would ensure that consumers actually affirmatively consented to enroll in the Program. The Commission directs the Bureau, in coordination with EB and CGB, to adopt a standard consent statement that providers will also be required to use in conjunction with the disclosures before enrolling eligible consumers in the Affordable Connectivity Program. Providers must retain all documentation or recordings of written or oral notifications and consumer consents and make them available for inspection upon request.

128. The practices of linking program enrollment to implementation of technical changes necessary to retain the subscriber's existing service or automatically enrolling subscribers that provided information needed for another purpose may be deceptive and would have a deleterious effect on the integrity of the Affordable Connectivity Program. Accordingly, the Commission prohibits participating providers from linking enrollment in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program. As examples, providers are prohibited from: (1) not clearly distinguishing the process of signing up for ACP-

supported services and devices from the process of signing up for, renewing, upgrading, or modifying other services, including Lifeline-supported services; (2) suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services; and (3) tying the submission of customer information provided for another purpose (e.g., address verification or equipment upgrade or replacement) to enrollment in the Affordable Connectivity Program.

129. The Commission also finds that requiring a consumer to accept a connected device in order to enroll with the provider is deceptive and harmful to consumers. Accordingly, the Commission prohibits participating providers from requiring consumers to obtain an ACP-supported device in order to enroll in the Affordable Connectivity Program.

130. *Timing Limitation on Consumer Disclosure and Consents for Providers with Pending Election Notices or Removal.* Providers are required to have a fully processed election notice before beginning to provide disclosures and collecting consumer consent for enrollment in the Affordable Connectivity Program. If a provider is removed from the program, it must cease providing the required enrollment-based consumer disclosures and consents for the Affordable Connectivity Program immediately upon removal. EBB Program providers that transitioned to the Affordable Connectivity Program do not need to submit an ACP election notice in order to make the required consumer disclosures and collect consumer consent for enrollment in the Affordable Connectivity Program.

131. *Transfer-Specific Disclosure and Consent Requirements.* The Commission adopts consent and disclosure requirements for households that seek to transfer their ACP benefit to another service provider. Before initiating a transfer in NLAD, the transfer-in provider must disclose orally or in writing, in clear, easily understood language to the ACP household: (1) that the household will be transferring its ACP benefit to the transfer-in provider; (2) that the effect of the transfer is that the ACP benefit will be applied to the transfer-in provider's service and will no longer be applied to service retained from the transfer-out provider; (3) that the household may be subject to the transfer-out provider's undiscounted rates as a result of the transfer if the household elects to maintain service from the transfer-out provider, and that (4) the household is limited to one ACP-transfer transaction per service

month with limited exceptions to reverse an improper transfer or address situations impacting the household's receipt of ACP-supported service from a particular provider.

132. The Commission finds that having a clear record of a consumer's consent to transfer their ACP benefit after having reviewed the ACP transfer disclosures is an important tool for preventing uninformed or unwanted ACP benefit transfers. The transfer-in provider must obtain the required consumer consent orally or in writing before each ACP transfer transaction, and the consent must indicate that after having reviewed the required transfer disclosures, the household consents to transfer its benefit to the transfer-in provider. Documentation of the consumer's affirmative consent must clearly identify the ACP subscriber name, acknowledge the subscriber was provided the required disclosure language, and that upon receiving the disclosure, the subscriber gave its informed consent to transfer its benefit, and the date consent was given. Participating providers must retain documentation or recordings related to the required disclosures and necessary consents for affordable connectivity benefit transfers.

133. Participating providers must obtain consent from an ACP household for each transfer and may not rely on older consent given for a previous transfer. Each time a provider initiates a transfer-in transaction for an ACP household, it must first provide the household with the required disclosures and obtain consent from the household acknowledging receipt of the disclosures and stating that the household consents to the transfer, even if the household previously received EBB or ACP-supported service from the provider. Consistent with the consents and disclosures required at initial ACP-enrollment, the Commission finds that using standardized language for ACP transfer disclosures and consent will better ensure that households are properly informed about and consented to transfer their ACP benefit. Therefore, the Commission directs the Bureau, in coordination with EB and CGB, to provide standardized disclosure and consent language that the providers will be required to present to ACP households prior to initiating the transfer.

134. Providers are required to provide written notice of transfer-in transactions to the transferred ACP household within five business days of completing the transfer in the NLAD. The notice of transfer to the ACP household should indicate the name of the transfer-in provider to which the household's ACP benefit was transferred, the date the transfer was initiated, and an explanation of the dispute process if the household believes the transfer was improper. Providers must retain documentation

demonstrating compliance with this notice requirement consistent with the document retention requirements adopted in the Order and make such documentation available to the Commission and USAC upon request. The transfer-in service provider is required to certify under penalty of perjury that it has complied with the transfer requirements the Commission adopts in the Order.

135. *Limiting the Number of ACP Consumer Transfers in a Service Month.* To provide an additional safeguard against unwanted and uninformed benefit transfers, the Commission limits ACP household benefit transfers to one per service month, with limited exceptions. The Commission directs USAC, in coordination with the Bureau, to develop a process for seeking an exception from the one-per-service month transfer restriction in the following circumstances: (1) an improper transfer; (2) the household's service provider ceases operations or fails to provide service (3) the household's current service provider is found to be in violation of ACP rules, and the violation impacts the customer for which exception is sought; or (4) the household changes its residential address to a location outside of the provider's service area for the Affordable Connectivity Program. An improper transfer occurs if the transfer-in provider does not make the required disclosures or obtain the required consent from the household to proceed with the transfer transaction. These exceptions ensure that unwanted transfers can be reversed, and also recognize that circumstances beyond the household's control may impact the provision or receipt of ACP service from a specific provider warranting more than one transfer in a month. The Commission further directs USAC to monitor exceptions and conduct program integrity reviews for a sampling of benefit transfers.

#### **F. Outreach, Cross-Agency Collaboration, Advertising, and Public Awareness**

136. For the Affordable Connectivity Program to achieve its full potential and reach as many eligible households as possible, households must be clearly informed of the program's existence, benefits, eligibility qualifications, and how to apply. The Infrastructure Act recognizes that the Commission, participating providers, other Federal agencies, State, local, and Tribal governments, and other program partners and stakeholders play an important role in disseminating information about the Affordable Connectivity Program to the intended population. The Infrastructure Act outlines specific requirements and permissible activities for consumer outreach that may be funded using Affordable Connectivity Program funding. 47 U.S.C. 1752(b)(10). The Commission recognizes the Program will benefit from

broad outreach in a variety of languages and methods to reach as many eligible consumers as possible, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality through collaborative outreach on the part of the Federal Government, participating providers, State, local, and Tribal governments, and other program partners and stakeholders.

## **1. Commission Outreach Efforts and Cross-Agency Collaboration**

137. *Commission Outreach Efforts.* The Infrastructure Act provides that the Commission may conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program. In particular, the Act permits the Commission to facilitate consumer research, conduct focus groups, engage in paid media campaigns, provide grants to outreach partners, and provide an orderly transition for participating providers and consumers from the EBB Program to the Affordable Connectivity Program. 47 U.S.C. 1752(b)(10)(C)(i)-(ii).

138. The Commission believes a wide range of outreach is needed to best promote awareness of and increase participation in the Affordable Connectivity Program. The Commission is committed to using a variety of outreach tools in the immediate term and for the duration of the program to encourage eligible households to enroll in the Affordable Connectivity Program as permitted under the statute. 47 U.S.C. 1752(b)(10)(C)(i). In addition, in the Further Notice of Proposed Rulemaking, the Commission is exploring the possibility of establishing an outreach grant program, but that would take time to establish in compliance with the applicable Federal rules and regulations governing Federal grants. Based on the costs associated with the Commission's Digital Television Transition outreach efforts (which included broad paid media campaigns) and current estimates for the anticipated types of outreach activities the Commission may undertake pursuant to the Infrastructure Act, the Commission anticipates the need to spend no more than \$100,000,000 over the next five years for outreach, including, but not limited to, immediate outreach activities and a potential outreach grant program. As such, the Commission permits the Bureau to spend up to, but not more than, \$100,000,000 over the next five years for such activities.

139. The Commission directs the Bureau, CGB, the Office of Communications Business Opportunities (OCBO), OMD, and the Office of Media Relations (OMR) to collaborate on identifying and conducting the Commission's paid outreach efforts to promote program awareness and encourage

households to enroll in the Affordable Connectivity Program, using the broad range of outreach tools permitted under the statute. These efforts will complement and build on the extensive outreach undertaken in support of the EBB Program and may include both national and more targeted activities, with particular emphasis on reaching people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically unserved, marginalized, or adversely affected by persistent poverty or inequality. This outreach should also focus on helping households that are unconnected due to affordability issues and are not currently enrolled in a low-income connectivity program with awareness and enrollment in the program.

140. Staff may work with USAC and third-party entities to conduct consumer research and focus groups. Consumer research and focus groups may provide meaningful insights into program messaging, including translations, application and enrollment process improvements, program awareness, perceived program value, and other topics that may improve awareness of the program and barriers to participation that could be addressed through outreach, and help drive enrollment. The Bureau, in consultation with CGB and OMR, with support from OMD as needed, may also pursue a paid media strategy for the Affordable Connectivity Program. In addition to traditional media and online ads, a paid media strategy may also include paid media in diverse outlets that serve culturally and linguistically isolated communities for which a significant population may qualify for the Affordable Connectivity Program. Such a media strategy may include a mix of national, regional, and hyper-local campaigns designed to reach the intended populations. The Bureau and CGB, with support from OMD as needed, may rely on a third-party media strategy firm to develop a media plan and facilitate paid advertising campaigns.

141. *Commission Collaboration with Other Federal Agencies.* Pursuant to the Infrastructure Act, the Commission must collaborate with relevant Federal agencies to ensure that households that participate in qualifying programs for the Affordable Connectivity Program are provided with information about the Affordable Connectivity Program, including enrollment information. 47 U.S.C. 1752(b)(10)(B). The Commission directs the Bureau in conjunction with CGB to collaborate with other relevant Federal agencies on efforts designed to ensure that households participating in the relevant qualifying programs are provided with information on the Affordable Connectivity Program, including

enrollment information. The Commission directs the Bureau and CGB to identify and engage in specific activities that would best satisfy this collaboration requirement, such as developing co-branded awareness campaign materials and email communications about the Affordable Connectivity Program to households participating in qualifying benefit programs.

142. *System of Records Notices Updates.* The Infrastructure Act also requires the Commission to “collaborate with relevant Federal agencies, including to ensure relevant Federal agencies update their System of Records Notices, to ensure that a household that participates in any program that qualifies the household for the Affordable Connectivity Program is provided information about the program, including how to enroll in the program.” 47 U.S.C. 1752(b)(10)(B). The Commission does not have the authority to compel other Federal agencies to update their Systems of Records Notices, but the statute permits it to collaborate with other agencies. Accordingly, the Commission directs the Bureau, the Office of General Counsel, and OMD to collaborate with relevant Federal agencies to ensure that households participating in relevant qualifying programs are provided information about the Affordable Connectivity Program, which will include encouraging other Federal agencies to update their System of Records Notices to permit information sharing related to the Affordable Connectivity Program.

## **2. Publication and Outreach Requirements for Participating Providers**

143. *Notification to All Internet Service Consumers Upon Subscription or Renewal.* The Infrastructure Act requires participating providers to notify all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll. 47 U.S.C. 1752(b)(10)(A). The Commission concludes that the term “renew” in the relevant section of the Infrastructure Act means extending a fixed-term service contract longer than one month. The requirement to notify consumers who “renew” a subscription should be limited to consumers extending a plan that is offered for a fixed term longer than one month and should not apply to consumers on month-to-month contracts. Service providers are also required to provide notice about the Affordable Connectivity Program to consumers who subscribe to month-to-month internet service at the time the consumer first subscribes to the service and annually thereafter.

144. Participating providers must notify in writing or orally, in a manner that is accessible to individuals with disabilities, all consumers who either subscribe to or renew a subscription to an internet



service offering about the Affordable Connectivity Program and how to enroll: (1) during enrollment for new subscribers; (2) at least 30 days before the date of renewal for subscribers not enrolled in the Affordable Connectivity Program who have fixed term plans longer than one month; and (3) annually for subscribers not already enrolled in the Affordable Connectivity Program who have month-to-month or similar non-fixed term plans. The requirement to notify new subscribers during enrollment also applies to existing subscribers contacting their provider to change service plans.

145. The Commission declines to apply the notice requirement only at the time of initial service enrollment for prepaid customers who typically pay for service on a month-to-month basis. Providers must inform prepaid customers about the Affordable Connectivity Program annually to ensure that these consumers remain aware of the Affordable Connectivity Program. Publicly available information (*e.g.*, websites or signage) alone is not sufficient to meet this notification requirement without some form of written or oral communication targeted to the individual subscriber, including but not limited to billing notifications or other emailed or mailed notifications. Providers should also offer these consumer notices in customers' preferred language.

146. The required consumer notice must use clear, easily understood language. At a minimum, the notice must indicate: (1) the eligibility requirements for consumer participation; (2) that the Affordable Connectivity Program is non-transferrable and limited to one monthly internet discount and a one-time connected device discount (only if the provider offers ACP discounted devices) per household; (3) how to enroll, such as a customer service phone number or relevant website information; and (4) that the Affordable Connectivity Program is a Federal Government benefit program operated by the Federal Communications Commission and, if it ends, or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions.

147. *Advertising Requirement.* Due to the importance of disseminating information about the Affordable Connectivity Program, the Commission requires participating providers to publicize the availability of the Affordable Connectivity Program in a manner reasonably designed to reach those consumers likely to qualify and in a manner that is accessible to individuals with disabilities. Service providers should utilize outreach materials and methods designed to reach eligible households that do not currently receive service. *Cf.* 47 CFR 54.405(b) (similar requirements in context of Lifeline program).

148. *Public Awareness Campaigns.* Finally, the Infrastructure Act requires participating providers, in collaboration with State agencies, public interest groups, and non-profit organizations, to carry out public awareness campaigns in their areas of service that highlight the value and benefits of broadband internet access service, and the existence of the Affordable Connectivity Program. 47 U.S.C. 1752(b)(8). Local social services agencies, schools, and other organizations that administer qualifying government assistance programs are also important program partners and stakeholders for the Affordable Connectivity Program; accordingly, service provider public awareness activities in collaboration with these entities would also satisfy the service provider public awareness obligation. The Commission gives participating providers flexibility as to how they fulfill this requirement and does not prescribe specific forms of outreach that service providers must use to satisfy the public awareness obligation, a fixed number of activities that service providers must complete, or a requirement that service providers collaborate with specific organizations. However, participating service providers must frequently engage in public awareness activities focused on participation in the Affordable Connectivity Program and in collaboration with the specified types of organizations, and must retain documentation sufficient to demonstrate their compliance with the public awareness obligations.

### **3. Commission Guidance**

149. The Infrastructure Act provides that the Commission may issue guidance, forms, instructions, publications, or technical assistance as necessary or appropriate to carry out the Affordable Connectivity Program, including actions intended to ensure that “programs, projects, or activities” are completed in a timely and effective manner. The Commission directs the Commission staff and USAC to develop comprehensive provider education and training programs, as well as consumer outreach plans. The Commission also directs USAC to develop and implement, under the oversight of the Bureau, CGB, and OCBO, training and provide information necessary to successfully participate in the Affordable Connectivity Program. The Commission directs USAC both to educate service providers on the ACP and to engage in consumer outreach to complement the efforts Commission staff will undertake in response to this Order. The Commission also directs CGB, including the Office of Native Affairs and Policy, and OCBO to coordinate with USAC to develop educational and informational communications and materials to advertise the Affordable Connectivity Program, such as a webpage and digital toolkit in a printable

format and translated into other languages that can easily be accessed by service providers, organizations, and the public.

## **G. Data Reporting and Performance Goals**

### **1. Tracking and Reporting of Available Funding**

150. In the *EBB Program Order*, the Commission instructed USAC to develop a tracker that reports on disbursements and program enrollment to allow providers and the public to monitor the balance of the Emergency Broadband Connectivity Fund. *Emergency Broadband Benefit Program*, Final Rule, 86 FR 19532, 19552-53, paras. 105-108 (Apr. 13, 2021). Consistent with the Commission's approach in the EBB Program, the Commission finds that publishing enrollment data for the Affordable Connectivity Program will empower the Commission's outreach partners and promote transparency about the program. Therefore, the Commission directs USAC, subject to oversight of the OEA and the Bureau, to develop a tracker and make it available on either the Bureau's website or USAC's website. In the tracker, USAC should include enrollment data including, enrollee age category, eligibility category, including households enrolled on the basis of enrollment in a provider's existing low-income program, type of broadband service, and enrollment numbers by five-digit ZIP code areas. USAC shall update the posted information regularly. The Commission directs the Bureau and OEA, with support from USAC, to develop a process to mask data as necessary, consistent with the Privacy Act, 5 U.S.C. 552a. The Commission further directs OEA and the Bureau to take into consideration the types of data requested by commenters when determining the additional program data, if any, that can be made available.

151. *Performance Measures.* Similar to the Lifeline and EBB Programs, the Affordability Connectivity Program will subsidize the internet bills of low-income households on a monthly basis; thus, the Commission plans to establish program goals consistent with those of the Lifeline and EBB Programs. The Commission establishes three goals for the Affordability Connectivity Program: (1) reduce the digital divide for low-income consumers, (2) promote awareness and participation in the Affordable Connectivity Program and the Lifeline program, and (3) ensure efficient and effective administration of the Affordability Connectivity Program.

152. Narrowing the digital divide has been an ongoing priority for the Commission and is one of the goals for the Lifeline program. A primary goal of the Affordability Connectivity Program should

be to close the digital divide by reducing the broadband affordability gap. The Commission directs the Bureau and OEA, with support from USAC, to collect as necessary appropriate data and develop metrics to determine progress towards this goal, such as broadband adoption by first-time subscribers and increasing enrollments in areas with low broadband internet penetration rates.

153. The Commission's second goal is to increase awareness of and participation in the Affordability Connectivity Program. The Commission should invest in direct, data-driven outreach to unconnected households to increase awareness of the Affordable Connectivity Program. To meet this goal, the Commission will work with community partners to increase consumer engagement with low-income individuals in underserved areas. The Commission directs USAC to continue to publish enrollment data by geographic regions. To measure progress towards this goal, the Commission will monitor the participation over time and by area. Additionally, the Commission directs the Bureau and OEA, with support from USAC, to collect the appropriate data.

154. The Commission adopts as the Commission's third goal efficient and effective administration of the Affordability Connectivity Program. The Commission will measure success towards this goal by evaluating the speed and ease of the application process and the reimbursement process, and the overall burden of the program on consumers. To measure the first performance metric, the Commission will conduct consumer and provider outreach that will aim to capture program satisfaction. In addition, the Commission seeks feedback from the Commission's State, community, and non-profit partners helping to educate consumers on the application process. For the Commission's second performance measure, the Commission will use a measure of consumer burden that divides the total inflation-adjusted expenditures of the low-income program each year by the number of households in the United States and express the measure as a monthly dollar figure. This calculation will rely on publicly available data and will therefore be transparent and easily verifiable.

#### **H. Transition of Legacy EBB Program Households**

155. The Commission takes seriously the need to ensure that legacy EBB Program households that transition to the Affordable Connectivity Program do not have adverse experiences such as bill shock as a result of the lower \$30 non-Tribal benefit under the Affordable Connectivity Program or a downgraded service offering. The Commission finds that a uniform opt-in approach for all legacy EBB

households that transition to the Affordable Connectivity Program is unnecessary and would likely result in significant de-enrollments and increase administrative burdens on service providers and consumers. An across-the-board opt-out approach does not provide consumers enough agency in the decision. Instead, the Commission adopts a hybrid approach that takes into consideration the various categories of legacy EBB households, and each category's respective potential level of risk for an adverse experience.

156. There are multiple categories of legacy EBB households that would have very different experiences as a result of the reduction to the \$30 non-Tribal benefit amount given their varied circumstances. Many legacy EBB Program households will not experience a rate change because their supported Internet service already costs \$30 or less a month or because they reside on qualifying Tribal lands and the Tribal benefit level has not changed. Other legacy EBB Program households are unlikely to face unexpected financial harm as a result of an up to \$20 bill increase because they previously demonstrated to their current provider a willingness to pay something for their broadband service, such as by paying some fee for an EBB-supported internet service, being the provider's existing paying customer for internet service before enrolling in the EBB Program, or consenting to the provider's general terms and conditions if they continued to receive their current service after the end of the EBB Program. However, for households who have not previously demonstrated a willingness to pay for continued internet service, there may be a stronger risk of potential bill shock from an up to \$20 bill increase as a result of a reduced benefit amount.

157. Legacy EBB households that would not experience a bill change as a result of the reduction of the non-Tribal benefit level to \$30, including subscribers who would not pay anything for their ACP service under the reduced \$30 non-Tribal benefit and subscribers who reside on qualifying Tribal lands and will continue to receive the same up to \$75 benefit level, will not be required to opt-in to continue to participate in the Affordable Connectivity Program after the end of the transition period. The notices that have already been issued to all legacy EBB subscribers sufficiently advise this category of subscribers of the change in the program name, retention of the \$75 Tribal benefit amount and reduction of the non-Tribal benefit to \$30. For this category of legacy EBB households, participating providers must retain documentation sufficient to demonstrate that this is the applicable transition path, consistent with the document retention requirements the Commission adopts in the Order.

158. The category of legacy EBB Program households that would experience a bill increase as a result of the reduction of the non-Tribal discount to \$30 but have already expressed to their current EBB provider a willingness and an ability to pay for broadband includes EBB households that (1) were existing paying internet service customers with the broadband provider when the household enrolled in the EBB with that provider; (2) previously consented to the provider's general terms and conditions if they continued to receive service at the end of the EBB Program; or (3) currently pay a fee for their supported internet service. This category of households has demonstrated to their current provider a willingness and ability to pay for internet service; therefore, they have little risk of unexpected financial harm even if their bill may potentially increase up to \$20. For this category of subscribers, the ability to opt out of the Affordable Connectivity Program or change their service is sufficient.

159. Finally, legacy EBB Program households that would experience a bill increase as a result of the reduction of the non-Tribal discount to \$30 but *have not* indicated to their current provider a willingness or an ability to pay for broadband either generally or at the end of the EBB Program, including households that did not have a pre-existing paying customer relationship with their current provider and have not consented to the providers' general terms and conditions if they continued service after the end of the transition period, or do not currently pay a fee for their EBB Program service, face a higher potential for bill shock and financial harm. The Commission is also concerned that, for this category of subscribers, solely providing a reminder of the right to opt out or change service may not be sufficient to mitigate the potential for unexpected financial harm.

160. To minimize the potential unexpected financial impact for this third category of legacy EBB households, the Commission gives providers multiple transition options: (1) switch the household to an internet service that costs \$30 or less a month after providing notice in advance of this change; (2) continue to provide the current level of service without increasing the household's bill if the provider has internet service options priced at \$30 per month or less; or (3) obtain the consumer's opt-in to continue to receive its current service with the \$30 benefit level before the first increased bill after the March 1, 2022, end of the transition period. Where a provider elects to switch legacy EBB Program households to a supported internet service that costs \$30 or less, the provider must first give the household advance notice as soon as practicable before changing their service and in that notice remind the household that it has the

right at any time to opt out of the Affordable Connectivity Program or change its ACP service or ACP provider. For providers that elect to obtain household opt-ins for this third category of legacy EBB households, the provider must use clear, easily understood language that informs the household of the increased rate amount, that they will be de-enrolled from the program if they do not opt in within thirty days of the opt-in request, that they have the right to opt out of the Affordable Connectivity Program, cancel or change their service or provider at any time. Participating providers must retain documentation concerning the transition path they took for this third category of legacy EBB Program households, including any household opt-ins.

161. *Additional Notices for Legacy EBB Households About the Reduced Non-Tribal Benefit and Ability to Opt-Out.* The Commission finds that it is important to continue to provide notifications about program changes to legacy EBB Program households for at least one month after the transition period ends on March 1, 2022, particularly for participating households whose out-of-pocket costs increase as a result of the reduced monthly non-Tribal benefit under the Affordable Connectivity Program. The Commission encourages participating providers to continue to disseminate information to their legacy EBB subscribers who would have out-of-pocket costs for their ACP service as a result of the reduced \$30 monthly non-Tribal benefit, including: (1) a reminder that the non-Tribal ACP benefit is \$30 per month; (2) a reminder that the household has the right to cancel or change its service, or switch providers without incurring an early termination fee; and (3) a reminder that the household has the right to opt out of the Affordable Connectivity Program at any time. If a service provider is already offering or intends to offer an ACP service that would eliminate or lessen the rate increase, it would also be useful for service providers to include that information. To maximize the potential consumer outreach on these issues, the Commission also strongly encourage participating providers to post this information on their website in a location that is highly visible for legacy EBB Program households. These notices, along with the additional notices that have already been issued concerning the change from the EBB Program to the Affordable Connectivity Program, will ensure that legacy EBB Program households whose bills increased as a result of the reduced ACP non-Tribal benefit amount are aware of the actions they can take to avoid paying a higher rate for their ACP-supported internet service.

162. *Legacy EBB Program Household Reliance on Prior Household Worksheet for the EBB*

*Program.* The Commission will not require legacy EBB Program households who transition to the Affordable Connectivity Program to submit a new household worksheet if they reside at the same address as another ACP subscriber. However, the Commission delegates authority to the Bureau to require legacy EBB Program households who reside at the same address as another ACP household to complete a new household worksheet if the Bureau determines that this would be necessary to promote program integrity, facilitate the administration of the Affordable Connectivity Program, or otherwise support program goals.

163. *Duration of Continuing the Non-Tribal EBB Benefit Level for Legacy EBB Subscribers.* Section 60502(b)(2) of the Infrastructure Act provides for a 60-day transition period, during which time EBB subscribers who were enrolled prior to December 31, 2021, and would otherwise see a reduction in their benefit under the Affordable Connectivity Program will continue to receive a benefit at the \$50 non-Tribal EBB Program benefit level. The Commission interprets this language to provide for a single 60-day transition period ending on March 1, 2022, during which legacy EBB Program households who were fully enrolled in the EBB Program as of December 31, 2021, would continue to receive the \$50 EBB benefit level.

## **I. Sunsetting Provisions**

164. Given the expanded funding for the Affordable Connectivity Program, the Commission finds that it is not necessary to establish sunseting rules at this time. Instead, the Commission delegates authority to the staff to establish procedures for the wind-down of the Program. Specifically, the Commission directs the Bureau, in coordination with OMD, OEA, and USAC, to develop a forecast of the depletion of the funding appropriated by Congress to the Commission to fund the Affordable Connectivity Program. Moreover, the Commission delegates to the Bureau to identify a process for notifying the public of the timing of the end of the Affordable Connectivity Program as the funds are nearing depletion.

165. A provider must obtain the household's affirmative opt-in, either orally or in writing, to continue providing the household broadband service after the end of the Affordable Connectivity Program and to charge a higher rate than the household would pay if it were receiving the full discount permitted under Affordable Connectivity Program rules. The Commission delegates to the Bureau the authority to establish specific timeframes for such consumer opt-ins and the appropriate consumer notice. The wind-



down procedures delegated to the staff must also consider how the remaining funds will be distributed in the final month of the Affordable Connectivity Program, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind-down the program.

166. The Commission directs the Bureau to implement procedures for reimbursement in the final month of the Affordable Connectivity Program in the event reimbursement claims exceed the amount of remaining funds, but in no circumstances will reimbursements be less than 50% of the provider's claim for that final month. For example, if based on the forecast of the depletion of funding established preceding, the remaining balance in the Affordable Connectivity Fund is sufficient to pay out 80% of each reimbursement claim submitted in the final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund and ending the Affordable Connectivity Fund. If, however, projections from USAC indicate that less than 50% of claims can be paid out on a pro-rata basis for the expected final month of the Affordable Connectivity Program, then USAC shall immediately notify the Bureau, OEA, and OMD. If staff agree with USAC's projections, then USAC will pause the reimbursement process for the final month, and instead staff will determine how best to use the remaining funds consistent with the Infrastructure Act.

## **J. Audits, Enforcement, and Removal of Providers**

### **1. Audits**

167. The Infrastructure Act requires the Commission to adopt audit requirements to ensure participating providers are in compliance with the program requirements and to prevent waste, fraud, and abuse. 47 U.S.C. 1752(b)(12). Within one year of the date of enactment of the Infrastructure Act, the Commission's Office of Inspector General is required to conduct an audit of the disbursements to a representative sample of providers. 47 U.S.C. 1752(b)(13). The Commission delegates authority to OMD to develop and implement an audit process of participating providers, for which it may obtain the assistance of third parties, including but not limited to USAC. Such ACP audits would be in addition to any audits conducted by the Commission's Office of Inspector General. The Commission also adopts the documentation retention requirements used in the EBB Program for the Affordable Connectivity Program.

168. The Commission has delegated authority to OMD, upon receiving approval from the

Office of General Counsel, to issue subpoenas that directly relate to OMD's oversight of audits of the Affordable Connectivity Program. 47 CFR 0.231(l).

169. *USAC Program Integrity Reviews.* The Commission directs USAC to develop a plan to conduct program integrity reviews to address the requirements of this Order and areas where trend analysis, complaint data, or other information shows a need for such reviews to determine provider and consumer compliance with ACP rules. This plan will be subject to OMD and Bureau approval.

## **2. Enforcement**

170. The Infrastructure Act specifies that a violation of 47 U.S.C. 1752 or any regulation promulgated under that section “shall be treated as violation of the Communications Act of 1934 or a regulation promulgated under such Act” and directs the Commission to enforce it “in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated or made a part of this section.” 47 U.S.C. 1752(g). Moreover, the Infrastructure Act expressly grants the Commission the authority to impose forfeiture penalties to enforce compliance. 47 U.S.C. 1752(b)(9)(C)(ii). The Commission will use its existing, statutorily permitted enforcement powers to initiate investigations of program rule violations for the Affordable Connectivity Program.

171. The Infrastructure Act, 47 U.S.C. 1752(j), provides that the Commission may not enforce a violation of the Act using its forfeiture authority if a participating provider demonstrates that it relied in good faith on information provided to such provider to make any verification required by 47 U.S.C. 1752(b)(2). That safe harbor will apply to providers who use the National Verifier for eligibility determinations or any alternative verification process approved by the Commission and act in good faith with respect to the eligibility verification processes. Providers that reasonably rely on documentation regarding eligibility determinations provided by eligible households or an eligibility determination from the National Verifier will be able to avail themselves of this statutory safe harbor with respect to their compliance with the Affordable Connectivity Program rules.

## **3. Removal of Participating Providers from the Affordable Connectivity**

## **Program**

172. *Involuntary Removal.* The Commission finds that it is essential that the Commission have the flexibility necessary to quickly respond and remove providers that are violating program rules or threatening the integrity of the Affordable Connectivity Program while also ensuring that a provider has a fair opportunity to respond prior to being removed from the program. A participating provider may be removed from the Affordable Connectivity Program for violations of program rules of the Affordable Connectivity Program, the EBB Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or other Universal Service Fund (USF) programs. In addition, a provider may be removed from the Affordable Connectivity Program for committing any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including fraudulent program enrollments. Moreover, a provider may be removed for conviction or civil judgment for attempt or commission of fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, making false claims, obstruction of justice, or similar offense, that arises out of activities related to the Affordable Connectivity Program, the EBB Program, the Emergency Connectivity Fund or successor programs, or any of the USF programs.

173. If the Commission develops information from Commission-led or sponsored investigations or receives consumer complaints, information obtained through program integrity reviews and audits, whistleblower reports, or information shared by law enforcement or from other credible sources that yields credible allegations of misconduct, the Bureau Chief or the Chief of EB, after consultation with USAC, OMD, and CGB, as appropriate, will initiate a proceeding to consider removal of the provider. The relevant Bureau will provide notice of the proceeding to the participating provider via electronic mail and/or U.S. mail using the contact information provided in the election notice filed with USAC or other sources if there is reason to suspect that the information on file with USAC is not up-to-date. Such notice will include the legal and factual bases for the initiation of the removal proceeding (as well as notice of any interim measures taken under this paragraph and reasons therefor) and indicate that the provider will have thirty (30) days to respond to the Bureau and to provide any relevant evidence

demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the provider should not be removed from the Affordable Connectivity Program. Concurrent with the issuance of the notice or at any time before a final determination is rendered by the Bureau Chief or Chief of EB, as the case may be, such Chief may, in light of the facts and circumstances set forth in the notice commencing the removal proceeding, and with notice to the provider of this interim measure, direct on an interim basis that the provider be removed from the Commission's listing of providers, from USAC's Companies Near Me tool, or any other similar records, and may also direct USAC to temporarily suspend the participating provider's ability to enroll or transfer in new subscribers during the pendency of the removal proceeding. Any such actions may be taken only (i) if based upon adequate evidence of willful misconduct that would warrant removal of the provider under the previous paragraph, and (ii) after determining that immediate action is necessary to protect the public interest. The relevant Chief may also direct, with notice to the provider, that a funding hold (or partial hold) be placed on the provider if, based on the circumstances of a particular case, there is adequate evidence that the provider's misconduct is likely to cause or has already resulted in improper claims for ACP reimbursement and such a hold (or partial hold) is necessary to protect the public interest. Any funding hold should be tailored in a manner that is related to and proportionate to the alleged misconduct.

174. Once a timely response is received from the provider, the relevant Chief will have thirty (30) days to make a removal determination and issue an order, which shall provide a detailed explanation for the determination. This 30-day period may be extended an additional 15 days if circumstances warrant. After review of any response submitted by the provider and all available credible evidence, if the relevant Chief determines based on a preponderance of the evidence that there has been a rule violation or other conduct warranting removal, the provider's authorization to participate in the Affordable Connectivity Program will be revoked, and the provider will be removed from the program. Similarly, failure by the provider to respond or provide the requested evidence within thirty days of the date of the notice also will result in a finding against the provider, removal from the program, and revocation of the provider's authorization to participate in the Affordable Connectivity Program. However, if the relevant Chief determines that the preponderance of the evidence fails to demonstrate that there has been a rule violation or other conduct warranting removal from the program, such Chief will

take appropriate steps to reinstate the provider to the listing of providers and USAC's "Companies Near Me" tool, if the provider had previously been delisted, advise USAC to permit the provider ability to enroll or transfer in new subscribers (if previously blocked), and lift any funding hold. A former participating provider removed from the Affordable Connectivity Program will be barred from seeking to rejoin, or participating in, the Affordable Connectivity Program as a participating provider for at least five years, or for such additional period as the relevant Chief considers to be warranted based on the circumstances of the case.

175. A provider may request reconsideration of the decision or submit a request for review by the full Commission of the Bureau Chief's determination pursuant to the Commission's rules. *See* 47 CFR 1.106, 1.115. If the Commission declines the provider's request for review or if the Commission upholds the Bureau Chief's determination, then the provider will be removed from the Affordable Connectivity Program as provided in the Bureau Chief's decision.

176. To avoid the impact the sudden removal of a provider from the Affordable Connectivity Program would have on low-income consumers who, through no fault of their own, could lose their discounted internet services, and to allow consumers served by the removed provider an opportunity to transfer their benefit to another participating provider, removed providers will be required to continue providing service to their existing enrolled households for sixty (60) days after removal, unless otherwise directed by the relevant Bureau. The provider will be eligible to receive reimbursement for any valid claims for discounts passed through to ACP households during this 60-day period. The removed provider must send written notice to its consumers within 30 days of the final determination in the removal proceeding notifying the consumers that the provider will no longer be participating in the Affordable Connectivity Program. Notice to the enrolled households must include a statement that the provider will be removed from the program; the effective date of removal; that the household cannot continue to receive the ACP benefit from its current provider and that if the household seeks to continue receiving ACP support it must transfer to a new participating provider; instructions on how to request a transfer to a new provider and how to find another participating provider; the contact information for the USAC ACP Support Center; the amount the household would be charged if the household continues to subscribe to internet service from the provider after the effective date of removal; and other information as determined

by the Bureau to help enable consumers to make informed decisions about their internet service. The removed provider shall also send a second written notice to consumers at least 15 days before the date by which the provider can no longer offer ACP-supported service. Failure to provide service during the 60-day period or to provide the preceding-referenced information to existing households may result in further enforcement action. The Commission also directs USAC to provide notice to consumers enrolled with the removed provider after the final determination in the removal proceeding.

177. The Commission delegates to the Wireline Competition Bureau and OMD the authority to modify the provider removal process as set forth in this section as may be necessary and appropriate in response to trends in the Affordable Connectivity Program, using appropriate notice and comment procedures. Any modified removal process shall continue to strike an appropriate balance between protecting consumers and the integrity of the Affordable Connectivity Program and ensuring that providers have a meaningful opportunity to respond to the allegations.

178. *Voluntary Withdrawal.* Participation in the Affordable Connectivity Program is voluntary. However, a provider's decision to leave the program will impact any households receiving ACP-supported service from that provider, and care must be taken to ensure that those households have an opportunity to transfer their benefit to another ACP provider.

179. A participating provider may withdraw its election to participate in the Affordable Connectivity Program at any time. Providers seeking to withdraw from the program must first notify USAC in writing at least 90 days before the effective date of withdrawal. The notice to USAC must contain the final date the provider will provide ACP-supported service to households and a statement confirming that as of the date of the notice to USAC the provider will cease enrolling new households, that the provider will cease advertising and marketing its participation in the Affordable Connectivity Program, and that the provider will notify its existing ACP households of its intent to exit the program. Upon receipt of this written notice, USAC and the Commission will remove the provider from the provider listings on the FCC's website and the "Companies Near Me" tool. As an initial matter, participating providers that were automatically transitioned from the EBB Program to the Affordable Connectivity Program must file an opt-out notice to USAC within 90 days of publication of this Order in the Federal Register; otherwise they will be considered to be affirmatively participating in the Affordable

## Connectivity Program.

180. The provider must also notify its existing ACP households of its intent to exit the program. Notice must be in writing, provided in formats accessible to individuals with disabilities, and sent to existing ACP households 90 days, 60 days, and 30 days before the effective date of withdrawal from the program. Notice to households must include the final date of service, the amount the households will be expected to pay if they remain with the provider after the provider exits the program, the effective date of such charges, and an explanation that once the provider exits the program, the ACP benefit will no longer be applied to the account, unless the subscriber transfers its benefit to a different participating provider. The notice must also include instructions detailing how to find and select a new participating provider, instructions on how to transfer to a different provider, the web address for the Commission's listing of participating providers and to USAC's "Companies Near Me" tool, the telephone number and email address of USAC's ACP Support Center, and the provider's customer service telephone number. During this period, the provider must continue to provide ACP-supported service to enrolled subscribers until the effective date of withdrawal from the program. Providers must retain records demonstrating compliance with the notice requirements.

### **K. Administration of the Affordable Connectivity Program**

181. The Commission relies on USAC as the administrator of the Affordable Connectivity Program, *see* 47 U.S.C. 1752(i)(3), and the Commission relies on the use of the USAC-administered systems, including but not limited to, the National Verifier, NLAD, RAD, and the Lifeline Claims System for the provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews.

182. *Administrative Cap.* The Commission directs USAC, in coordination with OMD, to regularly report to OMD its projected budget for administration of the Affordable Connectivity Program at a frequency to be determined by OMD. Based upon the initial estimates provided to OMD, which included costs associated with business process outsourcing, project management, IT professional fees, call center activities, and other costs, USAC's Affordable Connectivity Program administrative costs are estimated to be under the 2 percent cap.

183. The Commission must authorize payments from the Affordable Connectivity Fund prior

to the disbursement of those funds in the United States Treasury to providers who have submitted valid claims for reimbursement. Here, the Commission provides guidance on steps participants must be prepared to take to ensure timely payment of reimbursement claims from the Affordable Connectivity Fund.

184. *FCC Red Light Rule.* Participating providers in the Affordable Connectivity Program will be subject to the red light rule that the Commission implemented to satisfy the requirements of Debt Collection Improvement Act of 1996. Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt. 47 CFR 1.1910. If the delinquent debt remains unpaid or other arrangements have not been made within 30 days of being notified of the debt, the Commission will dismiss any pending applications. Consistent with practices in the Lifeline program and other programs such as the Telecommunications Relay Service, the red light rule is not waived for the Affordable Connectivity Program. If a prospective participant is on red light, it will need to satisfy or make arrangements to satisfy any debts owed to the Commission before its application and/or election notice will be processed. The Commission directs the Bureau and OMD to ensure that a process is in place to check an entity's red light status prior to processing an application, election notice, disbursement, or other request from the entity consistent with the red light rule.

185. *Treasury Offset.* ACP participating providers will be subject to the Treasury Offset Program (TOP), through which the Treasury may collect any delinquent debts they owe to Federal agencies and states by offsetting those debts against all or part of their ACP payments to satisfy such debt. Even if some or all of a provider's ACP payment has been offset to satisfy an outstanding Federal or State debt, it is required to pass the ACP discount to the customer for the service or connected device claimed.

186. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019 (PIIA), the Commission must ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds. Payment Integrity Information (PIIA), Pub. L. 116-117, 134 Stat. 113 (2019). To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the Treasury's Bureau of the Fiscal Service. If a check of the Do



Not Pay system results in a finding that an ACP provider should not be paid, the Commission will withhold issuing commitments and payments.

187. *Database Connections for the Affordable Connectivity Program.* To facilitate increased opportunity for automatic eligibility verification, USAC and the Commission have executed computer matching agreements (CMAs) with State and Federal partners for the EBB Program that allow USAC to continue to utilize those connections for the Affordable Connectivity Program, and the Commission directs USAC to continue to engage with State and Federal agencies with which there is no existing CMA for the Affordable Connectivity Program. In particular, the Commission expects USAC to continue to pursue establishing connections with eligibility databases for WIC, a new eligibility program under the Affordable Connectivity Program. The Infrastructure Act also requires the Secretaries of the Department of Health and Human Services (HHS), USDA, and the Department of Education to enter into a Memorandum of Understanding with USAC to share National Verifier data. Infrastructure Act, div. F, tit. V, sec. 60502(e).

#### **1. Application of Other Part 54 Regulations**

188. The Infrastructure Act, 47 U.S.C. 1752(f), permits the Commission to apply rules contained in part 54 of the Commission's rules to the Affordable Connectivity Program.

189. *Subpart E.* The Commission applies select portions of the regulations that control the Lifeline and EBB Program to the Affordable Connectivity Program. Specifically, the Commission applies the following definitions in section 54.400 to the Affordable Connectivity Program, subject to the further interpretations expounded upon in the Order: (f) income; (g) duplicative support; (h) household; (i) National Lifeline Accountability Database or Database; (j) Qualifying assistance program; (k) Direct service; (l) Broadband Internet access service; (o) National Lifeline Eligibility Verifier; and (p) Enrollment representatives. 47 CFR 54.400(f), (g), (h), (i), (j), (k), (l), (o), and (p).

190. The Commission requires providers to submit a certification in their reimbursement claim that every subscriber claimed has used their supported service, as defined in 47 CFR 54.407(c)(2), in the last thirty days from the snapshot date for the relevant claims month or has timely cured their non-usage. Providers must retain documentation demonstrating the subscriber monthly usage to support this certification. To ensure that their ACP households are eligible to receive the affordable connectivity

program benefit, a provider may not provide a consumer with an activated device that it represents enables use of affordable connectivity benefit supported service, nor may it activate service that it represents to be an ACP-supported service, unless and until it has: (1) confirmed that the household is an eligible household, and; (2) completed the eligibility determination and certification and; (3) any other necessary enrollment steps expounded upon in the Order.

191. To further bolster program integrity, the Commission applies the following sections of the Lifeline rules to the Affordable Connectivity Program: 47 CFR 54.407(a), (c)(2)(i)-(v), (d) and (e), pertaining to the number of participants as of the first of the month (snapshot), the definition of service usage, reimbursement certifications, and records; 47 CFR 54.417, pertaining to recordkeeping requirements; and 47 CFR 54.419, pertaining to the validity of e-signatures.

192. The Commission applies to the ACP the relevant subsections of 47 CFR 54.404, outlining carrier interactions with the NLAD, and portions of 47 CFR 54.405 concerning carrier obligations and de-enrollment. Specifically, the Commission applies 47 CFR 54.405(e)(1), (2), and (5), for de-enrollments generally, de-enrollments for duplicative support, and de-enrollments requested by the subscriber, respectively. The Commission directs USAC to accept and process de-enrollment requests directly from Affordable Connectivity Program subscribers, and to notify the subscriber's provider when such a de-enrollment occurs.

193. *Subpart H.* The Commission applies 47 CFR 54.702(c) prohibiting USAC from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. Additionally, the Commission grants USAC the authority to conduct program audits of contributors and providers, as provided in 47 CFR 54.707, subject to the Commission's further direction in the Order.

194. *Subpart I.* As a path for recourse to parties aggrieved by decisions issued by USAC, review of decisions issued by USAC to follow the requirements set forth in 47 CFR Part 54, Subpart I.

## **2. Delegations to the Bureaus and Office of Managing Director**

195. The Commission delegates authority to the Bureau and OMD to make necessary adjustments to the program administration and to provide additional detail and specificity to the requirements of the Affordable Connectivity Program to conform with the intent of the Order and ensure the efficient functioning of the program.

196. The Commission delegates financial oversight of the program to OMD and directs it to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. OMD is required to consult with the Bureau on any policy matters affecting the program, consistent with 47 CFR 0.91(a). OMD, in coordination with the Bureau, may issue additional directions to USAC and program participants in furtherance of its responsibilities.

197. In its administration of the Program, USAC is directed to comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security standards and requirements, such as the Privacy Act (5 U.S.C. 552a), relevant provisions in the Federal Information Security Modernization Act of 2014 (44 U.S.C. 3551 *et seq.*), National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

198. The Commission recognizes that, once implementation of the Affordable Connectivity Program begins, the Commission or USAC may encounter unforeseen issues or problems with the administration of the Affordable Connectivity Program and the Commission delegates to Commission staff the authority to address and resolve such issues consistent with the requirements adopted by the Commission.

### **III. SEVERABILITY**

199. All of the Affordable Connectivity Program rules that are adopted in the Order are designed to work in unison, and with existing Lifeline rules where noted, to implement the Affordable Connectivity Program, to offer discounts to eligible low-income households off of the cost of broadband service and certain connected devices, and to strengthen and protect the integrity of the program's administration. However, each of the separate Affordable Connectivity Program rules the Commission adopt here serve a particular function toward these goals. Therefore, it is the Commission's intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is the Commission's intent that the remaining rules shall remain in full force and effect.

### **IV. PROCEDURAL MATTERS**

200. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis "whenever an agency promulgates a final rule under [5 U.S.C. 553], after being required by that section or any other law to publish a general

notice of proposed rulemaking.” 5 U.S.C. 604(a). Pursuant to the Consolidated Appropriations Act, as extended by the Infrastructure Act, 5 U.S.C. 553 generally does not apply to the rulemaking proceeding implementing the Affordable Connectivity Program. *See* 47 U.S.C. 1752(h)(1). Furthermore, as discussed preceding, the Commission finds “good cause” under 5 U.S.C. 553(b)(B) to adopt the consumer protection provisions enumerated under 47 U.S.C. 1752(b)(11) without strictly following the notice procedures specified in 5 U.S.C. 553(b), to the extent necessary, because following such procedures would be “impracticable, unnecessary, [and] contrary to the public interest” in light of the statutory deadline for action to extend the EBB Program. 5 U.S.C. 553(b)(B). Accordingly, no Final Regulatory Flexibility Analysis is required for the Report and Order.

201. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the Affordable Connectivity Program are a “major rule” under the Congressional Review Act, 5 U.S.C. 804(2). By exempting this rulemaking proceeding, in most respects, from the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), the Commission concludes that Congress has determined notice and public procedure under the Administrative Procedure Act to be impracticable, unnecessary, or contrary to the public interest. In addition, the exemption of this proceeding from the Administrative Procedure Act requirement that rules cannot become effective until 30 days after publication in the Federal Register, 5 U.S.C. 553(d), demonstrates Congressional intent that the rules the Commission adopt shall become effective without delay. Furthermore, with respect to the consumer protection provisions enumerated under 47 U.S.C. 1752(b)(11), the Commission finds good cause, to the extent necessary, to adopt these rules without notice and public procedure because implementing the rest of the program without these statutorily mandated consumer protections would undermine the overall scheme. Accordingly, the Commission finds for good cause that notice and public procedure on the rules adopted herein are impracticable, unnecessary, or contrary to the public interest, and therefore the rules promulgated in the Report and Order will become effective upon the dates specified herein pursuant to 5 U.S.C. 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

202. *Paperwork Reduction Act.* Pursuant to 47 U.S.C. 1752(h)(2), the collection of information sponsored or conducted under the regulations promulgated in the Report and Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501-3521.

#### **ORDERING CLAUSES**

203. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021), this Report and Order **IS ADOPTED**.

204. **IT IS FURTHER ORDERED** that part 54 of the Commission's rules, 47 CFR part 54, *is amended* as set forth following, and such rule amendments *shall be effective* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for new 47 CFR 54.1802(b), 54.1804, 54.1807(b), 54.1808(c)(1)-(2), 54.1809(c), and 54.1810(a)-(b), which *shall be effective* **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### **List of Subjects in 47 CFR Part 54**

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

### **PART 54 – UNIVERSAL SERVICE**

1. The authority for part 54 is revised to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], add subpart R, consisting of §§ 54.1800 through 54.1812, to read as follows:

#### **Subpart R—Affordable Connectivity Program**

Sec.

54.1800 Definitions.

54.1801 Participating providers.

54.1802 Affordable connectivity benefit.

54.1803 Affordable Connectivity Program support amounts.

54.1804 [Reserved]

54.1805 Household qualification for Affordable Connectivity Program.

54.1806 Household eligibility determinations and annual recertification.

54.1807 Enrollment representative registration and compensation.

54.1808 Reimbursement for providing monthly affordable connectivity benefit.

54.1809 De-enrollment of subscribers from the Affordable Connectivity Program.

54.1810 Consumer protection requirements.

54.1811 Recordkeeping requirements.

54.1812 Validity of electronic signatures.

#### **Subpart R—Affordable Connectivity Program**

##### **§ 54.1800 Definitions.**

(a) *Administrator*. The term “Administrator” means the Universal Service Administrative Company.

(b) *Affordable connectivity benefit*. The term “affordable connectivity benefit” means a monthly discount for an eligible household, applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than \$30, or, if an Internet service offering is provided to an eligible household on Tribal land, not more than \$75.

(c) *Broadband Internet access service*. The term “broadband Internet access service” has the meaning given such term in 47 CFR 8.1(b) or any successor regulation.

(d) *Broadband provider.* The term “broadband provider” means a provider of broadband Internet access service.

(e) *Commission.* The term “Commission” means the Federal Communications Commission.

(f) *Connected device.* The term “connected device” means a laptop or desktop computer or a tablet.

(g) *Designated as an eligible telecommunications carrier.* The term “designated as an eligible telecommunications carrier,” with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)).

(h) *Direct service.* As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(i) *Duplicative support.* “Duplicative support” exists when an Affordable Connectivity Program subscriber or household is receiving two or more Affordable Connectivity Program services concurrently or two or more subscribers in a household have received a connected device with an Affordable Connectivity Program discount.

(j) *Eligible household.* The term “eligible household” means, regardless of whether the household or any member of the household receives support under subpart E of this Part, and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(1) At least one member of the household meets the qualifications in § 54.409(a)(2) or (b) of this part (or any successor regulation);

(2) The household’s income as defined in § 54.1800(k) is at or below 200% of the Federal Poverty Guidelines for a household of that size;

(3) At least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), or at least one member of the household is enrolled in a school or school district that participates in the Community Eligibility Provision (42 U.S.C. 1759a);

(4) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under § 54.1806(a)(2);

(5) At least one member of the household meets the eligibility criteria for a participating provider's existing low-income program, subject to the requirements of § 54.1806(a)(2); or

(6) At least one member of the household receives assistance through the special supplemental nutritional program for women, infants and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786).

(k) *Enrollment representative*. "Enrollment representative" means an employee, agent, contractor, or subcontractor, acting on behalf of a participating provider or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment.

(l) *Household*. A "household" is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(m) *Income*. "Income" means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 et seq.

(n) *Internet service offering*. The term "Internet service offering" means, with respect to a broadband provider, broadband Internet access service provided by such provider to a household.

(o) *Lifeline qualifying assistance program*. A "Lifeline qualifying assistance program" means any of the Federal or Tribal assistance programs the participation in which, pursuant to § 54.409(a) or (b),



qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

(p) *National Lifeline Accountability Database*. The “National Lifeline Accountability Database” is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(q) *National Lifeline Eligibility Verifier or National Verifier*. The “National Lifeline Eligibility Verifier” or “National Verifier” is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and Affordable Connectivity Program, as directed by the Commission.

(r) *Participating provider*. The term “participating provider” means a broadband provider that—

- (1) Is designated as an eligible telecommunications carrier; or
- (2) Meets the requirements established by the Commission for participation in the Affordable Connectivity Program and is approved by the Commission under § 54.1801(b); and
- (3) Elects to participate in the Affordable Connectivity Program; and
- (4) Has not been removed or voluntarily withdrawn from the Affordable Connectivity Program pursuant to § 54.1801(e).

(s) *Tribal lands*. For purposes of this subpart, “Tribal lands” include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands - areas held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, *et. seq.*, as amended; and any land designated as such by the Commission for purposes of subpart E of this part pursuant to the designation process in § 54.412.

## **§ 54.1801 Participating providers.**

(a) *Eligible telecommunications carriers.* A broadband provider that is designated as an eligible telecommunications carrier may participate in the Affordable Connectivity Program as a participating provider.

(b) *Other broadband providers.* A broadband provider that is not designated as an eligible telecommunications carrier may seek approval from the Wireline Competition Bureau to participate in the Affordable Connectivity Program as a participating provider.

(1) The Wireline Competition Bureau shall review and act on applications to be designated as a participating provider on an expedited basis. Such applications shall contain:

(i) The states or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each State or territory, but has not been designated an eligible telecommunications carrier; and,

(iii) Certifications of the provider's plan to combat waste, fraud, and abuse, which shall:

(A) Confirm a household's eligibility for the Program through either the National Verifier or a Commission-approved eligibility verification process prior to seeking reimbursement for the respective subscriber;

(B) Follow all enrollment requirements and obtain all certifications as required by the Program, including providing eligible households with information describing the Program's eligibility requirements, one-per-household rule, and enrollment procedures;

(C) Interact with the necessary Administrator systems, including the National Verifier, National Lifeline Accountability Database, and Representative Accountability Database, before submitting claims for reimbursement, including performing the necessary checks to ensure the household is not receiving duplicative benefits within the Program;

(D) De-enroll from the Program any household it has a reasonable basis to believe is no longer eligible to receive the benefit consistent with Program requirements;

(E) Comply with the Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and

(F) Agree to the Commission's enforcement and forfeiture authority.

(2) Notwithstanding paragraph (b)(1) of this section, the Wireline Competition Bureau shall automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers Internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse. Such applications seeking automatic approval shall contain:

(i) The States or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each State or territory, but has not been designated an Eligible Telecommunications Carrier; and,

(iii) A description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Affordable Connectivity Program.

(c) *Election notice.* All participating providers shall file an election notice with the Administrator. The election notice shall be submitted in a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator. All participating providers shall maintain up-to-date contact and other administrative information contained in the election notice as designated by the Wireline Competition Bureau and the Administrator. These updates shall be made within 10 business days of the change in designated information contained in the election notice. The election notice shall be made under penalty of perjury or perjury and at a minimum should contain:

(1) The states or territories in which the provider plans to participate in the Affordable Connectivity Program;

(2) A statement that, in each State or territory, the provider was a "broadband provider;"

(3) A list of states or territories where the provider is an existing Eligible Telecommunications Carrier, if any;

(4) A list of states or territories where the provider received Wireline Competition Bureau approval, whether automatic or expedited, to participate, if any;

(5) Whether the provider intends to distribute connected devices, and if so, documentation and information detailing the equipment, co-pay amount charged to eligible households, and market value of the connected devices in compliance with the rules and orders of the Affordable Connectivity Program;

and

(6) Any other information necessary to establish the participating provider in the Administrator's systems.

(d) *Alternative verification process application.* In accordance with § 54.1806(a)(2), all participating providers seeking to verify household eligibility with an alternative verification process shall submit an application in a manner and form consistent with the direction of Wireline Competition Bureau. All participating providers shall maintain up-to-date information contained in the application as designated by the Wireline Competition Bureau. These updates shall be made within 10 business days of the change in designated information. The alternative verification process application shall be made under penalty of perjury and at a minimum should contain:

(1) A description of how the participating provider will collect a prospective subscriber's—

(i) Full name,

(ii) Phone number,

(iii) Date of birth,

(iv) E-mail address,

(v) Home and mailing addresses,

(vi) Name and date of birth of the benefit qualifying person if different than applicant,

(vii) Household eligibility criteria and documentation supporting verification of eligibility, and

(viii) Certifications from the household that the information included in the application is true.

(2) A description of the process the participating provider uses to verify the required subscriber information contained in paragraph (d)(1) of this section and why this process is sufficient to prevent waste, fraud, and abuse,

(3) A description of the training the participating provider uses for its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents,

(4) A description of why any of the criteria contained in paragraphs (d)(1) through (3) of this section is not necessary to prevent waste, fraud, and abuse if any of the criteria are not part of the alternative verification process, and

(5) A description of why the participating provider's established program requires approval of an

alternative verification process and why the participating provider proposes to use an alternative verification process instead of the National Verifier for eligibility determinations.

*(e) Voluntary withdrawal or involuntary removal of participating providers from the Affordable Connectivity Program—(1) Definitions.* For purposes of this paragraph (e):

*(i) Removal.* Removal means involuntary discontinuation of a provider's participation in the Affordable Connectivity Program pursuant to the process outlined in paragraphs (e)(2)(ii) and (iii) of this section.

*(ii) Suspension.* Suspension means exclusion of a participating provider from activities related to the Affordable Connectivity Program for a temporary period pending completion of a removal proceeding.

*(2) Suspension and removal—(i) Suspension and removal in general.* The Commission may suspend and/or remove a participating provider for any of the causes in paragraph (e)(2)(ii) of this section. Suspension or removal of a participating provider constitutes suspension or removal of all its divisions, other organizational elements, and individual officers and employees, unless the Commission limits the application of the suspension or removal to specifically identified divisions, other organizational elements, or individuals or to specific types of transactions.

*(ii) Causes for suspension or removal.* Causes for suspension or removal are any of the following:

(A) Violations of the rules or requirements of the Affordable Connectivity Program, the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs;

(B) Any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including without limitation fraudulent enrollments.

(C) A conviction or civil judgment for attempt or commission of fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, making false claims, obstruction of justice, or similar offense, that arises out of activities related to the Affordable

Connectivity Program, the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs.

(iii) *Suspension and removal procedures.* The following procedures apply to the suspension and removal of a participating provider:

(A) The Chief of the Wireline Competition Bureau or Enforcement Bureau will commence a removal proceeding by providing to the participating provider a notice via electronic mail and/or U.S. mail setting forth the legal and factual bases for the initiation of the removal proceeding (as well as notice of any interim measures taken under paragraph (e)(2)(iii)(B) of this section and reasons therefor) and informing the provider of its duty to respond within 30 days of the date of the notice.

(B) Concurrent with the issuance of such notice commencing the removal proceeding, or at any time before a final determination in the proceeding is rendered, the Chief of the Wireline Competition Bureau or Enforcement Bureau may, in light of the facts and circumstances set forth in the notice commencing the removal proceeding, and with notice to the provider of this interim measure, direct that the participating provider be removed from the Commission's list of providers, from the Administrator's Companies Near Me Tool, or from any similar records, and also may direct the Administrator to temporarily suspend the provider's ability to enroll or transfer in new subscribers during the pendency of the removal proceeding. Any such interim actions may be taken only {i} if based upon adequate evidence of willful misconduct that would warrant removal under paragraph (e)(2)(ii) of this section, and {ii} after determining that immediate action is necessary to protect the public interest. In addition, the Chief of the Wireline Competition Bureau or Enforcement Bureau may also direct, with notice to the provider, that an interim funding hold (or partial hold) be placed on the provider upon a determination that there is adequate evidence that the provider's misconduct is likely to cause or has already resulted in improper claims for Affordable Connectivity Program reimbursement and is necessary to protect the public interest. Any funding hold should be tailored in a manner that relates to and is proportionate to the alleged misconduct.

(C) The participating provider shall respond within 30 days of the date of the notice commencing the removal proceeding with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the provider should not be removed from the

Affordable Connectivity Program. Failure to respond or to provide evidence in a timely manner will result in a finding against the provider, removal from the program, and revocation of the provider's authorization to participate in the Affordable Connectivity Program.

(D) Within 30 days of receiving the response, the Chief of the Wireline Competition Bureau or Enforcement Bureau will make a determination and issue an order providing a detailed explanation for the determination. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines that a preponderance of the evidence fails to demonstrate that there has been conduct warranting removal, then any measures taken under paragraph (e)(2)(iii)(B) of this section will be discontinued immediately. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines by a preponderance of the evidence that there has been conduct warranting removal, the provider's authorization to participate in the Affordable Connectivity Program will be revoked, and the provider shall be immediately removed from the program. Upon removal from the program, the former participating provider shall be barred from seeking to rejoin, and from participating in, the Affordable Connectivity Program for at least five years, or such longer period as provided for in the order, based upon review of all relevant circumstances. Any such providers will be similarly barred from participation in any Affordable Connectivity Program successor program during the removal period determined under the order.

(E) A provider may request reconsideration of the Bureau Chief's determination under paragraph (e)(2)(iii)(D) of this section or submit a request for review by the full Commission pursuant to the Commission's rules. *See* §§ 1.106, 1.115 of this chapter. A provider may also seek a stay of the Bureau Chief's determination under §§ 1.43 and 1.102(b)(3) of this chapter.

(3) *Voluntary withdrawal.* A participating provider may withdraw its election to participate in the Affordable Connectivity Program by submitting a written notice of voluntary withdrawal to the Administrator at least 90 days before the intended effective date of the withdrawal. The notice of voluntary withdrawal shall include statements that the provider is complying with each of the transition provisions set forth in paragraph (d)(4) of this section.

(4) *Transition provisions for participating providers that are removed or that voluntarily withdraw from the program and their subscribers.* (i) A participating provider shall cease to enroll or transfer in new households or to advertise or market the discounted rates for its services subject to the

affordable connectivity benefit—

(A) Immediately upon the effective date of the final removal determination, unless the provider has already been precluded on an interim basis from transferring in or enrolling new households; or

(B) At least 90 days before the effective date of the provider's voluntary withdrawal from the program.

(ii) A participating provider shall provide notices regarding its removal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(A) The provider shall issue the first notice within 30 days of the removal determination and the second notice at least 15 days before the effective date of the provider's removal from the Affordable Connectivity Program.

(B) Such notices shall include—

(1) A statement that the participating provider will be removed from and no longer be participating in the Affordable Connectivity Program;

(2) The effective date of the provider's removal from the Affordable Connectivity Program;

(3) A statement that upon the effective date of the removal, the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(4) The amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the discounted rate is no longer available;

(5) An explanation that in order to continue receiving internet service with an affordable connectivity benefit after the provider has been removed from the program, the eligible household must transfer its affordable connectivity benefit to a different participating provider;

(6) Information on how to locate providers participating in the Affordable Connectivity Program, including the web address for USAC's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable;

(7) Instructions on how to find and select a new participating provider and to request such a transfer;



(8) The provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center; and

(9) Other information as determined by the Wireline Competition Bureau.

(iii) A participating provider shall provide written notices regarding its voluntary withdrawal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(A) The provider shall issue such notices 90 days, 60 days, and 30 days before the effective date of the provider's voluntary withdrawal from the program.

(B) Such notices shall include—

(1) The date when the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(2) The amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the affordable connectivity program discount is no longer available and the effective date of the new rate;

(3) An explanation that in order to continue receiving internet service with an affordable connectivity benefit after the provider withdraws from the Affordable Connectivity Program, the eligible household shall transfer its affordable connectivity benefit to a different participating provider;

(4) Instructions on how to find and select a new participating provider and to request such a transfer;

(5) Information on how to locate providers participating in the Affordable Connectivity Program, including the web address for the Administrator's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable; and

(6) The provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center.

(iv) A provider shall continue providing service to its existing eligible household subscribers at discounted rates subject to the affordable connectivity benefit—

(A) Until the date 60 days after the effective date of the removal or order; or

(B) Until the effective date of its voluntary withdrawal from the program.

(v) A provider that has been removed or that has voluntarily withdrawn from the program may continue to request and receive reimbursements from the Administrator for the amount of the affordable connectivity benefit discounts that it provided to eligible household subscribers during the required 60 days following removal or until voluntary withdrawal, subject to the deadline for filing reimbursement claims.

(vi) The provider shall retain records demonstrating its compliance with these transition requirements.

(f) *Annual certification by participating providers.* An officer of the participating provider who oversees Affordable Connectivity Program business activities shall annually certify, under the penalty of perjury, that the participating provider has policies and procedures in place to comply with all Affordable Connectivity Program rules and procedures. This annual certification shall be made in a manner prescribed by the Wireline Competition Bureau and the Administrator. At a minimum, the annual certification requires the aforementioned officer of the participating provider attest to:

(1) The participating provider having policies and procedures in place to ensure that its enrolled households are eligible to receive Affordable Connectivity Program support;

(2) The participating provider having policies and procedures in place to ensure it accurately and completely provides information to required administrative systems, including the National Verifier, National Lifeline Accountability Database, Representative Accountability Database, and other Administrator Systems; and,

(3) The participating provider acknowledging that:

(i) It is subject to the Commission's enforcement, fine, or forfeiture authority under the Communications Act;

(ii) It is liable for violations of the Affordable Connectivity Program rules and that its liability extends to violations by its agents, contractors, and representatives;

(iii) Failure to be in compliance and remain in compliance with the Affordable Connectivity Program rules and orders, or for its agents, contractors, or representatives to fail to be in compliance, may result in the denial of funding, cancellation of funding commitments, and the recoupment of past disbursements; and

(iv) Failure to comply with the rules and orders governing the Affordable Connectivity Program could result in civil or criminal prosecution by law enforcement authorities.

**§ 54.1802 Affordable connectivity benefit.**

(a) The Affordable Connectivity Program will provide reimbursement to a participating provider for the monthly affordable connectivity benefit on the price of broadband internet access service (including associated equipment necessary to provide such service) it provides to an eligible household plus any amount the participating provider is entitled to receive for providing a connected device to such a household under § 54.1803(b).

(b) [Reserved]

**§ 54.1803 Affordable Connectivity Program support amounts.**

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household but not more than \$30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than \$75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(s).

(b) A participating provider that, in addition to providing a broadband internet access service subject to the affordable connectivity benefit to an eligible household, supplies such household with a connected device may be reimbursed by an amount equal to the market value of the device less the amount charged to and paid by the eligible household, but no more than \$100.00 for such connected device.

(1) A participating provider that provides a connected device to an eligible household shall charge and collect from the eligible household more than \$10.00 but less than \$50.00 for such connected device;

(2) An eligible household may receive, and a participating provider may receive reimbursement for, no more than one (1) connected device per eligible household;

(3) The eligible household shall not receive such a discount for a connected device, and the participating provider shall not receive reimbursement for providing the connected device at such a discount, if the household or any member of the household previously received a discounted connected

device from a participating provider in the Emergency Broadband Benefit Program or in the Affordable Connectivity Program.

**§ 54.1804 [Reserved]**

**§ 54.1805 Household qualifications for Affordable Connectivity Program.**

(a) To qualify for the Affordable Connectivity Program, a household must constitute an eligible household under the definition in § 54.1800(j).

(b) In addition to meeting the qualifications provided in paragraph (a) of this section, in order to qualify to receive an affordable connectivity benefit from a participating provider, neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider.

**§ 54.1806 Household eligibility determinations and annual recertification.**

(a) *Eligibility verification processes.* To verify whether a household is an eligible household, a participating provider shall—

(1) Use the National Verifier; or

(2) Rely upon an alternative verification process of the participating provider, if—

(i) The participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(ii) Not later than 7 days after receiving the information required under paragraph(a)(2)(i) of this section, the Wireline Competition Bureau—

(A) Determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(B) Notifies the participating provider of the determination under paragraph (a)(2)(ii)(A) of this section.

(3) Rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program as described in § 54.1800(j)(3). The participating provider shall retain documentation demonstrating the school verifying

eligibility, the program(s) that the school participates in, the qualifying household, and the program(s) the household participates in.

(4) Check its own electronic systems, whether such systems are maintained by the participating provider or a third party, to confirm that the household is not already receiving another affordable connectivity benefit from that participating provider.

(5) Collect and retain documentation establishing at least one member of the household is enrolled in a school or school district that participates in the National School Lunch Program's Community Eligibility Provision (CEP) (42 U.S.C. 1759a) if enrolling households based on CEP eligibility.

(b) *Participating providers' obligations.* All participating providers shall implement policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit. A provider may not provide a consumer with service that it represents to be Affordable Connectivity Program-supported service or seek reimbursement for such service, unless and until it has:

- (1) Confirmed that the household is an eligible household pursuant to § 54.1805(a) and (b);
- (2) Completed any other necessary enrollment steps, and;
- (3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with § 54.1811.

(c) *One-per-household worksheet.* If the prospective household shares an address with one or more existing Affordable Connectivity Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber shall complete a form certifying compliance with the one-per-household rule set forth in § 54.1805(b) prior to initial enrollment.

(d) *The National Lifeline Accountability Database.* In order to receive Affordable Connectivity Program support, participating providers shall comply with the following requirements:

- (1) All participating providers shall query the National Lifeline Accountability Database to determine whether a prospective subscriber is currently receiving an Affordable Connectivity Program supported service from another participating provider; and whether anyone else living at the prospective subscriber's residential address is currently receiving an Affordable Connectivity Program-supported

service.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber who is not seeking to transfer his or her affordable connectivity benefit, is currently receiving an Affordable Connectivity Program-supported service, the participating provider shall not provide and shall not seek or receive Affordable Connectivity Program reimbursement for that subscriber.

(3) Participating providers may query the National Lifeline Accountability Database only for the purposes provided in paragraphs (d)(1) and (2) and (e)(1) and (2) of this section, and to determine whether information with respect to its subscribers already in the National Lifeline Accountability Database is correct and complete.

(4) Participating providers shall transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Affordable Connectivity Program subscriber's full name; full residential address; date of birth; the telephone number associated with the Affordable Connectivity Program service; the date on which the Affordable Connectivity Program discount was initiated; the date on which the Affordable Connectivity Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Affordable Connectivity Program.

(5) All participating providers shall update an existing Affordable Connectivity Program subscriber's information in the National Lifeline Accountability Database within ten business days of receiving any change to that information, except as described in paragraph (d)(7) of this section.

(6) All participating providers shall obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the participating provider shall describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program, and that failure to provide consent will result in subscriber being denied the affordable connectivity benefit.

(7) When a participating provider de-enrolls a subscriber from the Affordable Connectivity Program, it shall transmit to the National Lifeline Accountability Database the date of Affordable Connectivity Program de-enrollment within one business day of de-enrollment.

(8) All participating providers shall securely retain subscriber documentation that the participating provider reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by National Lifeline Accountability Database or National Verifier processes, which require, inter alia, verification of eligibility, identity, address, and age.

(9) A participating provider shall not enroll or claim for reimbursement a prospective subscriber in the Affordable Connectivity Program if the National Lifeline Accountability Database or National Verifier cannot verify the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(10) A participating provider shall apply the Affordable Connectivity Program benefit no later than the start of the first billing cycle after the household's enrollment or transfer, and pass through the discount to the household prior to claiming reimbursement for the discount in the Affordable Connectivity Program.

(e) *Connected device reimbursement and the National Lifeline Accountability Database.* In order to receive Affordable Connectivity Program reimbursement for a connected device, participating providers shall comply with § 54.1803(b) and the following requirements:

(1) Such participating provider shall query the National Lifeline Accountability Database to determine whether a prospective connected device benefit recipient has previously received a connected device benefit.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber has received a connected device benefit, the participating provider shall not seek a connected device reimbursement for that subscriber.

(3) Such participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the affordable connectivity benefit for service provided by the same participating provider, except that a participating provider may seek reimbursement for a connected device provided to a household if the household had been receiving an Affordable Connectivity Program-supported service from that provider at the time the connected device was supplied to the household, but the household subsequently transferred its benefit to another provider before the provider had an opportunity to claim the connected device.

(4) Where two or more participating providers file a claim for a connected device reimbursement for the same subscriber, only the participating provider whose information was received and processed by the National Lifeline Accountability Database or Lifeline Claims System first, as determined by the Administrator, will be entitled to a connected device reimbursement for that subscriber.

(5) All participating providers shall obtain from each subscriber consent to transmit the information required under paragraphs (d)(1) and (e)(1) of this section. Prior to obtaining consent, the participating provider shall describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program connected device benefit, and that failure to provide consent will result in the subscriber being denied the Affordable Connectivity Program connected device benefit.

(6) In a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator, a participating provider shall provide to the Administrator information concerning the connected device supplied to the household, including device type, device make, device model, subscriber ID of the household that received the device, date the device was delivered to the household, method used to provide the device (shipped, in store, or installed by provider), market value of the device, and amount paid by the household to the provider for the device. No claim for reimbursement for a connected device supplied by the participating provider to the household shall be submitted prior to payment by the household of the amount described in § 54.1803(b)(1).

(f) *Annual eligibility re-certification.* (1) Participating providers shall re-certify annually all Affordable Connectivity Program subscribers whose initial eligibility was verified through the participating provider's approved alternative verification process or through a school, except where the Administrator using the National Verifier is responsible for the annual recertification of Affordable Connectivity Program subscribers. The Administrator using the National Verifier will re-certify the eligibility of all other Affordable Connectivity Program subscribers. Affordable Connectivity Program subscribers who are also enrolled in Lifeline may rely on a successful recertification for the Lifeline program to satisfy this requirement.

(2) In order to recertify a subscriber's eligibility for the Affordable Connectivity Program, a



participating provider shall confirm a subscriber's current eligibility to receive an affordable connectivity benefit by following the eligibility process and requirements under paragraphs (b)(1) through (5) of this section and shall also follow the requirements and processes for either its alternative verification processes approved under paragraph (a)(2) of this section or the eligibility verification processes and requirements for school-based eligibility verifications in paragraph (a)(3) of this section, confirming that the subscriber still meets the program or income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review.

(3) Where the Administrator is responsible for re-certification of a subscriber's Affordable Connectivity Program eligibility, the Administrator shall confirm a subscriber's current eligibility to receive Affordable Connectivity Program service by:

(i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review; or

(iii) If the subscriber's program-based or income-based eligibility for the Affordable Connectivity Program cannot be determined by accessing one or more eligibility or income databases, then the Administrator shall obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility or income database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility or income database the Administrator shall obtain both an approved Annual Recertification Form and acceptable documentation demonstrating eligibility from that subscriber to complete the recertification process.

(4) Where the Administrator is responsible for re-certification of subscribers' Affordable Connectivity Program eligibility, the Administrator shall provide to each provider the results of its annual re-certification efforts with respect to that provider's subscribers.

(5) If a provider is unable to re-certify a subscriber or has been notified by the Administrator that

it is unable to re-certify a subscriber, the provider shall comply with the de-enrollment requirements provided for in § 54.1809(d).

(6) One-Per-Household Worksheet—at re-certification, if the subscriber resides at the same address as another Affordable Connectivity Program subscriber and there are changes to the subscriber's household relevant to whether the subscriber is only receiving one affordable connectivity benefit per household, then the subscriber shall complete a new Household Worksheet. Providers must retain the one-per-household worksheet for subscribers subject to this requirement in accordance with § 54.1811.

**§ 54.1807 Enrollment representative registration and compensation.**

(a) *Enrollment representative registration.* A participating provider shall require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, participating providers shall require that all enrollment representatives provide the Administrator with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which shall be used for:

- (i) Accessing the National Lifeline Accountability Database;
- (ii) Accessing the National Verifier;
- (iii) Accessing any eligibility database; and
- (iv) Completing any Affordable Connectivity Program enrollment or verification forms.

(2) Participating providers shall ensure that enrollment representatives shall not use another person's unique identifier to enroll Affordable Connectivity Program subscribers, recertify Affordable Connectivity Program subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Participating providers shall ensure that enrollment representatives shall regularly recertify their status with the Administrator to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Participating providers shall also ensure that enrollment representatives shall update their registration information within 30 days of any change in such

information.

(b) [Reserved]

**§ 54.1808 Reimbursement for providing monthly affordable connectivity benefit.**

(a) Affordable Connectivity Program support for providing a qualifying broadband Internet access service shall be provided directly to a participating provider based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first day of the calendar month.

(b) For each eligible household receiving the affordable connectivity benefit on a broadband internet access service, the reimbursement amount shall equal the appropriate support amount as described in § 54.1803. The participating provider's Affordable Connectivity Program reimbursement shall not exceed the actual amount charged by the participating provider.

(c) A participating provider offering a service subject to the affordable connectivity benefit that does not require the participating provider to assess and collect a monthly fee from its subscribers shall not receive support for a subscriber to such service until the subscriber activates the service by whatever means specified by the provider; and

(1) [Reserved]

(2) [Reserved]

(d) A participating provider that, in addition to providing the affordable connectivity benefit to an eligible household, provides such household with a connected device may be reimbursed in the amount and subject to the conditions specified in §§ 54.1803(b) and 54.1806(e).

(e) In order to receive Affordable Connectivity Program reimbursement, an officer of the participating provider shall certify, under penalty of perjury, as part of each request for reimbursement, that:

(1) The officer is authorized to submit the request on behalf of the participating provider;

(2) The officer has read the instructions relating to reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;

(3) The participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;

(4) The participating provider has obtained valid certification and application forms as required by the rules in this subpart for each of the subscribers for whom it is seeking reimbursement;

(5) The amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;

(6) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit—

(i) Has not been and will not be charged for the amount the provider is seeking for reimbursement;

(ii) Will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract;

(iii) Was not, after the date of the enactment of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and

(iv) Will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other subscribers.

(7) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and has paid more than \$10.00 but less than \$50.00 for such connected device;

(8) If offering a connected device, the connected device claimed meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount does not exceed the market value of

the connected device less the amount charged to and paid by the eligible household, and that the connected device has been delivered to the household;

(9) If the participating provider used an alternative verification process to verify that each household is eligible for the Affordable Connectivity Program, the verification process used was designed to avoid waste, fraud, and abuse;

(10) If seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement and submitted the required information;

(11) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10;

(12) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, State, or Federal agency with jurisdiction over the provider;

(13) The provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. 8701, in connection with the Affordable Connectivity Program;

(14) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted;

(15) The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b), 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C.

1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. 3729-3733, 3801-3812);

(16) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any other Federal or State program;

(17) All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and

(18) The provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all States, territories, and the District of Columbia, and checked their records in accordance with § 54.1806(a)(4).

(f) In order to receive Affordable Connectivity Program reimbursement, a participating provider shall keep accurate records of the revenues it forgoes in providing Affordable Connectivity Program-supported services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart.

(g) In order to receive reimbursement, participating providers shall submit certified reimbursement claims through the Lifeline Claims System within six months of the snapshot date in paragraph (a) of this section, or the following business day in the event the 1st is a holiday or falls on a weekend. If the participating provider fails to submit a certified reimbursement claim by the six-month deadline, the reimbursement claim will not be processed.

#### **§ 54.1809 De-enrollment from the Affordable Connectivity Program.**

(a) *De-enrollment generally.* If a participating provider has a reasonable basis to believe that an Affordable Connectivity Program subscriber does not meet or no longer meets the criteria to be considered an eligible household under § 54.1805, the participating provider shall notify the subscriber of impending termination of his or her affordable connectivity benefit. Notification of impending termination shall be sent in writing separate from the subscriber's monthly bill, if one is provided, and shall be written in clear, easily understood language. The participating provider shall allow a subscriber 30 days following the date of the impending termination letter to demonstrate continued eligibility. A subscriber making such a demonstration shall present proof of continued eligibility to the National

Verifier or the participating provider consistent with the participating provider's approved alternative verification process. A participating provider shall de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's deadline to respond.

(b) *De-enrollment for duplicative support.* Notwithstanding paragraph (a) of this section, upon notification by the Administrator to any participating provider that a subscriber is receiving the affordable connectivity benefit from another participating provider, or that more than one member of a subscriber's household is receiving the affordable connectivity benefit and that the subscriber should be de-enrolled from participation in that provider's Affordable Connectivity Program, the participating provider shall de-enroll the subscriber from participation in that provider's Affordable Connectivity Program within five business days. A participating provider shall not claim any de-enrolled subscriber for Affordable Connectivity Program reimbursement following the date of that subscriber's de-enrollment.

(c) [Reserved]

(d) *De-enrollment for failure to re-certify.* Notwithstanding paragraph (a) of this section, a participating provider shall de-enroll an Affordable Connectivity Program subscriber who does not respond to the provider's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.1806(f); or who fails to provide the annual one-per-household re-certification as required by § 54.1806(f)(6). Prior to de-enrolling a subscriber under this paragraph, the provider shall notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber shall be given 60 days to respond to recertification efforts. If a subscriber does not respond to the provider's notice of impending de-enrollment, the provider shall de-enroll the subscriber from the Affordable Connectivity Program within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(e) *De-enrollment requested by subscriber.* If a participating provider receives a request from a subscriber to de-enroll from the Affordable Connectivity Program, it shall de-enroll the subscriber within two business days after the request.

#### **§ 54.1810 Consumer protection requirements.**

(a)-(b) [Reserved]

(c) *Credit checks.* (1) A participating provider shall not:

(i) Consider the results of a credit check as a condition of enrollment in the Affordable Connectivity Program.

(ii) Consider the results of a credit check to determine to which Affordable Connectivity Program-supported internet service plan a household may apply the affordable connectivity benefit.

(iii) Use the results of a credit check to decline to transfer a household's Affordable Connectivity Program benefit.

(d) *Non-payment.* (1) Bill payment due date means the due date for payment specified on a bill for service charges.

(2) A participating provider shall not terminate an eligible household's service subject to the affordable connectivity benefit on the grounds that the household has failed to pay the charges set forth on a bill for such service unless 90 consecutive days have passed since the bill payment due date.

(e) *Upselling and downselling—(1) Prohibition of inappropriate upselling and downselling.* A participating provider and its agents shall not exert pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan that is more costly, less costly, affords different features, provides higher or lower speed or bandwidth, is subject to higher or lower data caps, or is bundled with additional services, equipment, or features, or fewer services, equipment, or features, than the service or plan that the household is already purchasing or has inquired about purchasing through the Affordable Connectivity Program.

(2) *Specific prohibited activities.* Prohibited activities include, but are not limited to:

(i) Requiring, as a condition of enrolling the household or applying the affordable connectivity benefit, that the household select a service, bundled plan, or equipment, other than the service or bundled plan that the eligible household subscriber is already purchasing or using or has inquired about.

(ii) Pressuring an eligible household to purchase a service or bundled plan to benefit the provider but not the household.

(3) *Permitted activities.* Provided that they do not exert pressure on existing or prospective eligible household subscribers, participating providers—

(i) May communicate information regarding tiers of service that afford higher or lower speeds or



bandwidth, are available at higher or lower prices, or have features that differ from a service or plan that an eligible household is already purchasing or has inquired about for the Affordable Connectivity Program; and

(ii) May create or promote service plans that are specially priced or designed to meet the needs of eligible households.

(f) *Extended service contracts and early termination fees*—(1) *Definitions.* (i) An extended service contract is typically an offer of service at a discount price in exchange for a commitment from the subscriber to remain on that service plan for a set period of time, usually at least a year.

(ii) Early termination fees are fees that a subscriber is obligated to pay if it purchases a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(2) *Extended service contracts.* An eligible household may elect to purchase and apply the affordable connectivity benefit to a participating provider's service plan subject to an extended service contract.

(3) *Early termination fees.* Notwithstanding the provisions that apply to subscribers to extended service contracts who are not eligible households, an eligible household shall not be liable for early termination fees if it purchases and applies its affordable connectivity benefit to a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(g) *Restrictions on switching service offerings.* A participating provider shall not impose any restrictions on a household's ability to switch Internet service offerings, unless, once the consumer enters a delinquent status after the bill due date, the provider limits available service plans to offerings that are covered by the full benefit amount, and the household consents to switch service plans.

(h) *Restrictions on switching providers.* (1) A participating provider shall not engage in any practice that is reasonably likely to cause a household to believe it is prohibited or restricted from transferring its benefit to a different participating provider.

(2) A participating provider shall not:

(i) Misrepresent or fail to accurately disclose to a household the rules and requirements pertaining to transfers to another participating provider in the Affordable Connectivity Program;

(ii) Charge a household a fee to transfer their benefit to another participating provider; or

(iii) Suggest or imply that the provider may change the household's service plan if it transfers the benefit to another participating provider.

(i) *Unjust and unreasonable acts or practices.* (1) Providers are prohibited from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program.

(2) Such unjust and unreasonable acts or practices include, but are not limited to:

(i) Advertising or holding itself out as a participating provider if it is not authorized to participate in the Affordable Connectivity Program;

(ii) Engaging in false or misleading advertising of the Affordable Connectivity Program;

(iii) Failing to timely provide service, equipment, or devices that are advertised, promoted, or marketed as part of the Affordable Connectivity Program;

(iv) Failing to enroll an eligible household as soon as practicable once the provider receives the household's affirmative consent to enroll with that provider;

(v) Failing to apply the affordable connectivity benefit to such household on or before the start of the household's next billing cycle;

(vi) Failing to deliver a supported connected device within 30 days of obtaining the household's affirmative consent to receive such device; and

(vii) Violating any Program rule.

#### **§ 54.1811 Recordkeeping requirements.**

Participating providers shall maintain records to document compliance with all Commission requirements governing the Affordable Connectivity Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator, or their designee, upon request. Participating providers shall maintain the documentation related to the eligibility determination and reimbursement claims for an Affordable Connectivity Program subscriber for as long as the subscriber receives the Affordable Connectivity Program discount from that participating provider, but for no less than the six full preceding calendar years.

#### **§ 54.1812 Validity of electronic signatures.**

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

3. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 54.1802 by adding paragraph (b) to read as follows:

**§ 54.1802 Affordable connectivity benefit.**

\* \* \* \* \*

(b) A participating provider may allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household that includes broadband internet access service or a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both.

4. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], add § 54.1804 to read as follows:

**§ 54.1804 Participating provider obligation to offer the Affordable Connectivity Program.**

All participating providers in the Affordable Connectivity Program shall:

(a) Make available the affordable connectivity benefit to eligible households.

(b) Publicize the availability of the Affordable Connectivity Program in a manner reasonably designed to reach those likely to qualify for the service and in a manner that is accessible to individuals with disabilities.

(c) Notify all consumers who either subscribe to or renew a subscription to an Internet service offering about the Affordable Connectivity Program and how to enroll.

(1) Providers shall deliver a notice in writing or orally, in a manner that is accessible to persons with disabilities:

(i) During enrollment for new subscribers;

(ii) At least 30 days before the date of renewal for subscribers not enrolled in the Affordable Connectivity Program who have fixed-term plans longer than one month; and

(iii) Annually for subscribers not already enrolled in the Affordable Connectivity Program who have month-to-month or similar non-fixed term plans.

(2) The notice shall, at a minimum, indicate;

(i) The eligibility requirements for consumer participation;

(ii) That the Affordable Connectivity Program is non-transferable and limited to one monthly internet discount and a one-time connected device discount per household;

(iii) How to enroll, such as a customer service phone number or relevant website information; and

(iv) That the Affordable Connectivity Program is a Federal Government benefit program operated by the Federal Communications Commission and, if the Program ends, or when a household is no longer eligible, subscribers will be subject to the provider's regular rates, terms, and conditions.

(d) Frequently carry out public awareness campaigns in their Affordable Connectivity Program areas of service that highlight the value and benefits of broadband internet access service and the existence of the Affordable Connectivity Program in collaboration with State agencies, public interest groups, and non-profit organizations and retain documentation sufficient to demonstrate their compliance with the public awareness obligations.

5. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 54.1807 by adding paragraph (b) to read as follows:

**§ 54.1807 Enrollment representative registration and compensation.**

\* \* \* \* \*

(b) *Prohibition of commissions for enrollment representatives.* A participating provider shall not offer or provide to enrollment representatives, their direct supervisors, or entities that operate on behalf of the participating provider, any form of compensation that is—

(1) Based on the number of consumers or households that apply for or are enrolled in the Affordable Connectivity Program with the participating provider;

(2) Based on revenues that the participating provider has received or expects to receive in connection with the Affordable Connectivity Program, including payments for connected devices;

(3) Based on the participating provider permitting the retention of cash payments received from the subscriber as part of the required contribution for a connected device;

(4) Shifted, characterized or otherwise classified as compensation paid in connection with other services, business operations, or unrelated to Affordable Connectivity Program activities that is based on Affordable Connectivity Program applications, enrollments, or revenues.

\* \* \* \* \*

6. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 54.1808 by adding paragraphs (c)(1) and (2) to read as follows:

**§ 54.1808 Reimbursement for providing monthly affordable connectivity benefit.**

\* \* \* \* \*

(c) \* \* \*

(1) After service activation, shall only continue to receive reimbursement for the affordable connectivity benefit on such service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.1809(c); and

(2) Shall certify that every subscriber claimed has used their service subject to the affordable connectivity benefit, as “usage” is defined by § 54.407(c)(2), at least once in the last 30 consecutive days or has cured their non-usage as provided in § 54.1809(c), in order to claim that subscriber for reimbursement for a given service month.

\* \* \* \* \*

7. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 54.1809 by adding paragraph (c) to read as follows:

**§ 54.1809 De-enrollment from the Affordable Connectivity Program.**

\* \* \* \* \*

(c) *De-enrollment for non-usage.* Notwithstanding paragraph (a) of this section, if an Affordable Connectivity Program subscriber fails to use, as “usage” is defined in § 54.407(c)(2), for 30 consecutive days an Affordable Connectivity Program service that does not require the participating provider to assess and collect a monthly fee from its subscribers, the participating provider shall provide the subscriber 15 days’ notice, using clear, easily understood language, that the subscriber’s failure to use the Affordable

Connectivity Program service within the 15-day notice period will result in service termination for non-usage under this paragraph (c).

\* \* \* \* \*

8. Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 54.1810 by adding paragraphs (a) and (b) to read as follows:

**§ 54.1810 Consumer protection requirements.**

(a) *Disclosures and consents for enrollment.* Prior to enrolling a consumer in the Affordable Connectivity Program, participating providers shall obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to enroll with the provider.

(1) The disclosures that shall be presented to the consumer shall convey in clear, easily understood terms that:

(i) The Affordable Connectivity Program is a government program that reduces the customer's broadband internet access service bill;

(ii) The household may obtain Affordable Connectivity Program-supported broadband service from any participating provider of its choosing;

(iii) The household may apply the affordable connectivity benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for Affordable Connectivity Program-supported service;

(iv) The provider may disconnect the household's Affordable Connectivity Program-supported service after 90 consecutive days of non-payment;

(v) The household will be subject to the provider's undiscounted rates and general terms and conditions if the Affordable Connectivity Program ends, if the consumer transfers their benefit to another provider but continues to receive service from the current provider, or upon de-enrollment from the Affordable Connectivity Program; and

(vi) The household may file a complaint against its provider via the Commission's Consumer Complaint Center.

(2) If standard disclosure and consent language has been provided by the Commission, providers shall present that language to consumers prior to enrollment.

(3) A participating provider shall not link enrollment in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program, including but not limited to:

(i) Not clearly distinguishing the process of signing up for ACP-supported services and devices from the process of signing up for, renewing, upgrading, or modifying other services, including Lifeline-supported services;

(ii) Suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services; and

(iii) Tying the submission of customer information provided for another purpose (e.g., address verification or equipment upgrade or replacement) to enrollment in the Affordable Connectivity Program.

(b) *Transfers in the Affordable Connectivity Program.* Participating providers shall comply with the following requirements for transferring an eligible household's affordable connectivity program benefit between providers.

(1) *Disclosures and subscriber consent.* (i) Prior to transferring an eligible household's affordable connectivity program benefit, the provider transferring in the household shall obtain the household's affirmative consent either orally or in writing that acknowledges that after having reviewed the required disclosures, the household consents to transfer its benefit to the transfer-in provider.

(ii) The oral or written disclosures shall be provided in clear, easily understood language and convey the following information:

(A) That the subscriber will be transferring its affordable connectivity program benefit to the transfer-in provider;

(B) That the effect of the transfer is that the subscriber's affordable connectivity program benefit will be applied to the transfer-in provider's service and will no longer be applied to service retained from the transfer-out provider;

(C) That the subscriber may be subject to the transfer-out provider's undiscounted rates as a result of the transfer if the subscriber elects to maintain service from the transfer-out provider; and

(D) That the subscriber is limited to one affordable connectivity program benefit transfer transaction per service month, with limited exceptions for situations where the subscriber seeks to reverse an unwanted transfer or is unable to receive service from a specific provider.

(iii) The household's oral or written consent shall:

(A) Clearly identify the subscriber name;

(B) Acknowledge the subscriber was provided the disclosure language required under paragraph (b)(1)(ii) of this section;

(C) Indicate that having received the required disclosures, the subscriber gave its informed consent to transfer its benefit to the transfer-in provider; and

(D) Indicate the date of the subscriber's consent.

(iv) Participating providers shall use any standard consent and disclosure language provided by the Commission.

(v) Participating providers shall satisfy the disclosure and consent requirements for each transfer transaction.

(2) *Notification to subscribers.* Within five business days of completing a subscriber transfer in the National Lifeline Accountability Database, the transfer-in provider shall provide written notice to the transferred subscriber that indicates the following:

(i) The name of the transfer-in provider to which the subscriber's affordable connectivity program benefit was transferred;

(ii) The date the transfer was initiated; and

(iii) An explanation of the dispute process if the subscriber believes the transfer was improper.

(3) *Limitation on transfers per month.* Participating subscribers can only transfer their affordable connectivity benefit between providers once in a given service month, with the following limited exceptions:

(i) The subscriber's benefit was improperly transferred;

(ii) The subscriber's service provider ceases operations or fails to provide service;

(iii) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought;



(iv) The subscriber changes its location to a residential address outside of the provider's service area for the Affordable Connectivity Program.

\* \* \* \* \*

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